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**THE EMANCIPATION OF THE
AMERICAN CITY**

BOOK OF
THE
EMANCIPATION
OF THE
AMERICAN CITY

BY
WALTER TALLMADGE ARNDT
"



NEW YORK
DUFFIELD AND COMPANY
1917

TO THE
AMERICAN

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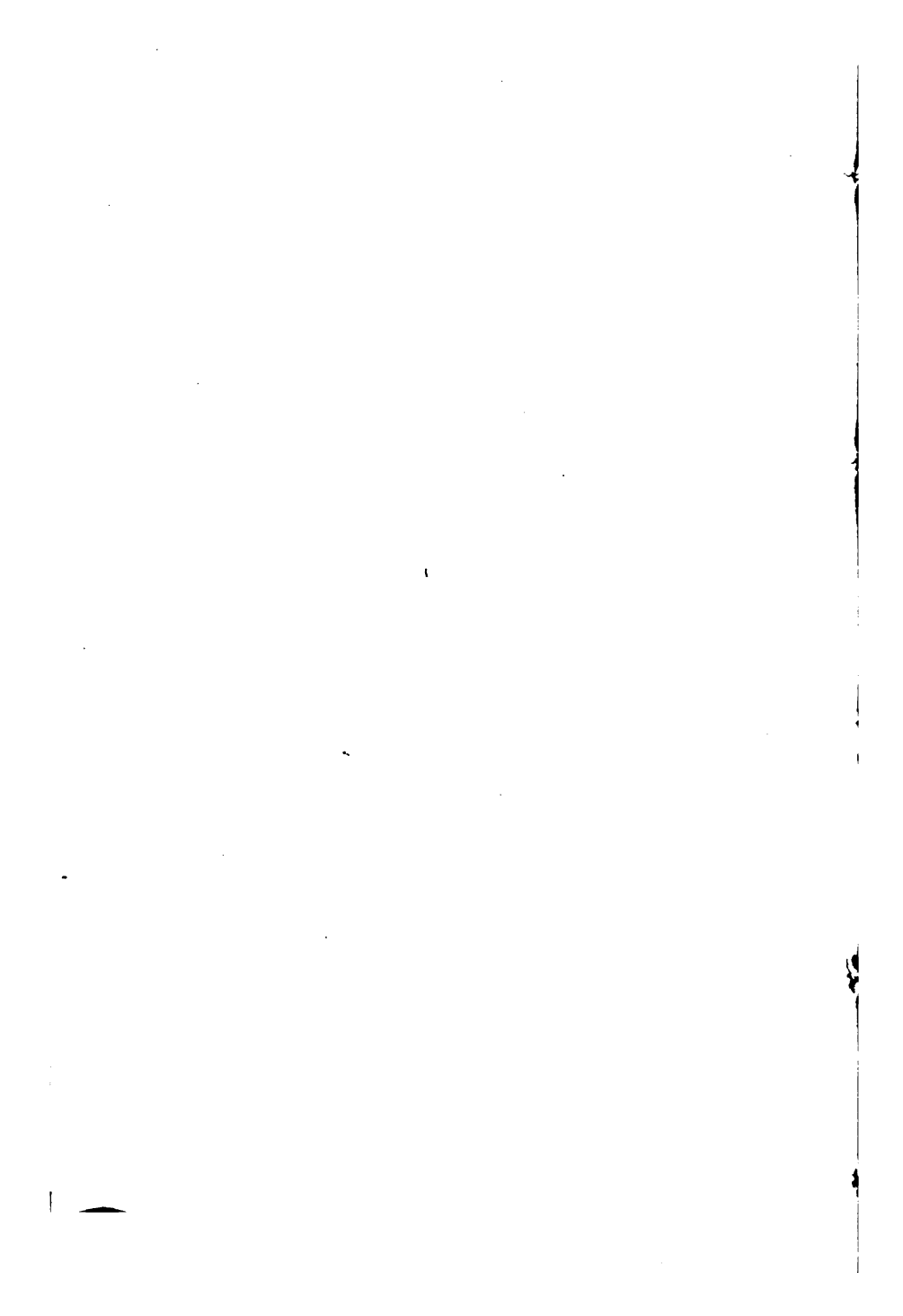
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*To my earliest instructors in the principles of
home rule*

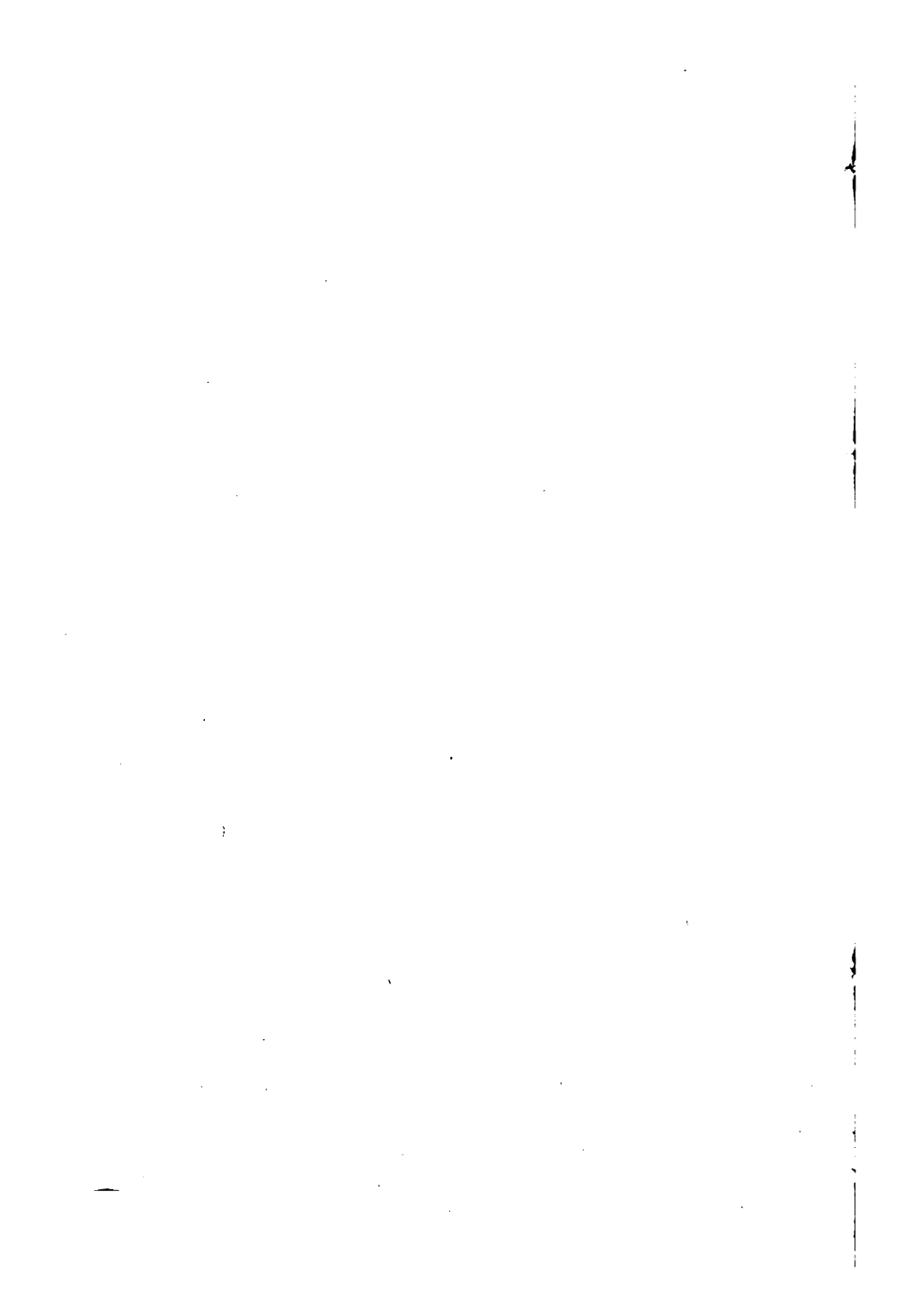
MY FATHER AND MOTHER

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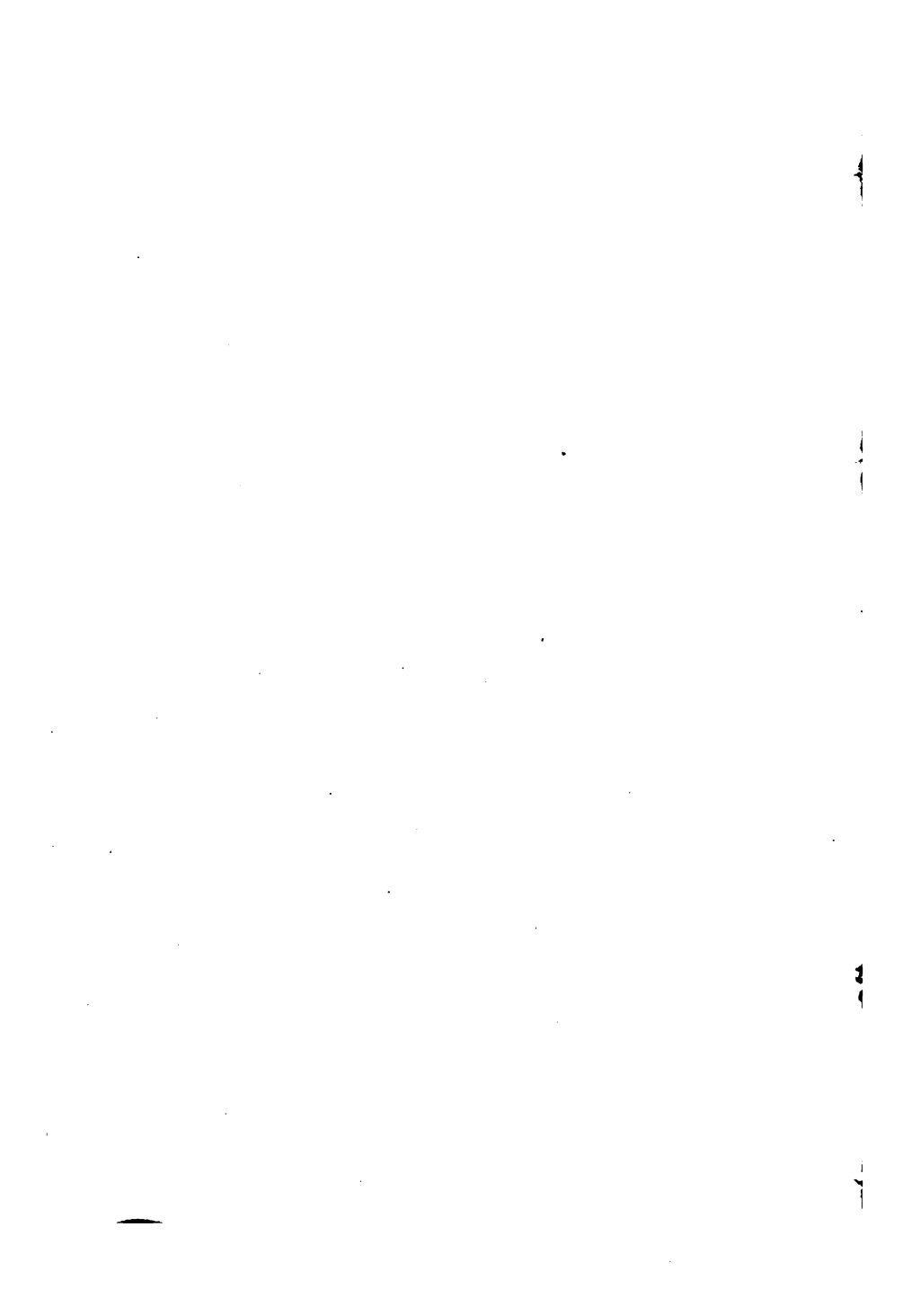
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INTRODUCTION

Since James Bryce recorded it as his opinion a generation ago, that "the government of cities is the one conspicuous failure of the United States," a veritable revolution has been under way in American municipal government. It is not yet completed, but it has been so widespread in its influence and results as to make it clear that what was unhappily true when Mr. Bryce wrote, cannot in truth be said to-day.

The development of municipal government in America during the last decade in particular, emphasizes the fact that growth in the structure of government is very much the same as physical growth. Evolution is a system of experimentation by means of which Nature is forever trying to bring into existence a more perfect species. Variation resulting from these experiments of Nature is written all through the history of plant and animal life. Nature tries a new form. If it is good it is perpetuated; if it is worthless it is discarded.

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Political evolution is the story of natural evolution all over again. While our state and national governments were being expanded and readjusted to meet the new conditions of industrial, social and political life our cities seemed almost to stand still. A little over a decade ago came the awakening and ever since then municipal government in America has been in a state of rapid development. This development has all been in the direction of giving a city what has come to be known as "home rule"—the power to do its own municipal housekeeping, to expand politically as it has industrially and physically, to free itself from the restrictions that have rendered impossible of realization all that is best in American municipal life; in fine, to control its own municipal destiny.

This movement has involved the trying out of many agencies of government which the people have believed might contribute to the well being of the city. Some of these agencies are still on trial. Others have already established themselves as proved forces in the fight for municipal betterment. The underlying idea in all these efforts toward efficiency and perfection, is that of conferring on city authorities, requisite powers, under the general laws and the consti-

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tution, to control the affairs of their own city.

There are discussed here some of the more important factors in this movement. Many of them do not directly involve the problem of home rule, as generally understood, but all of them are designed, directly or indirectly, to set the city free, so far as possible, from the shackles of a system of local government that has proved, after long and costly experience, to be wholly ineffective and clearly incapable of giving American cities the fullest benefits of our democratic form of government.

No two writers have ever fully agreed on a definition of municipal home rule. One might say it is self-definitive and in a broad sense that is true. But when one begins to elaborate on its limitations or its comprehensiveness, one soon passes the point where any definition will fit and is compelled to write a book to tell what he means by it. The courts do not agree as to what municipal home rule means. It has been construed to mean one thing in California, another thing in Minnesota and still another thing in Missouri. Finally, the lawmakers do not seem to know what home rule means, as the attitude of the legislatures in different states, and of succeeding legislatures in the same state, clearly proves.

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The difficulty lies in the fact that it means different things to different people according as they believe that this thing or that should be comprehended in it.

Home rule requires not only a power, conferred by statute or constitution, on a city to do certain things, but to be really effective it demands also an active desire on the part of the people of a city, as expressed in their votes or through their representatives, that such things should be done.

The author does not attempt to make an argument for all the home rule agencies which are discussed here, but rather to emphasize the importance of adequate powers for cities and to indicate how they may obtain certain municipal "house-furnishings" for themselves, if they choose, and what these things may mean to a city when obtained. The point is that cities should have the power. But in order that the fullest benefits of municipal home rule may be enjoyed, two clearly essential and intimately related factors are a "short ballot" for municipal officers, and non-partisan municipal elections.

With legislative interference removed and the power to frame, amend and adopt its own charter, and with the necessity of choosing but

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few city officers at a time and these few made truly responsible and elected on a non-partisan basis, any city ought to be able to work out its municipal problems satisfactorily. Then it will be able to put its own city planning system into operation, take or reject the recall and referendum, provide for a standardization of salaries and an adequate civil service, adopt and put into operation city pension systems, provide parks and playgrounds and recreation centres, maintain city markets, adopt a city budget system, and do any other thing which the constitution and the general laws of the state allow. Then will the inhabitants of a city find freer play for the development of municipal initiative and be able to develop a livelier sense of civic responsibility. When that point is reached, and not until then can a city be said to be in full measure fulfilling its mission of service to its inhabitants; then a city will be a better place to live in—and all this will be due to the fact that it will possess real home rule.

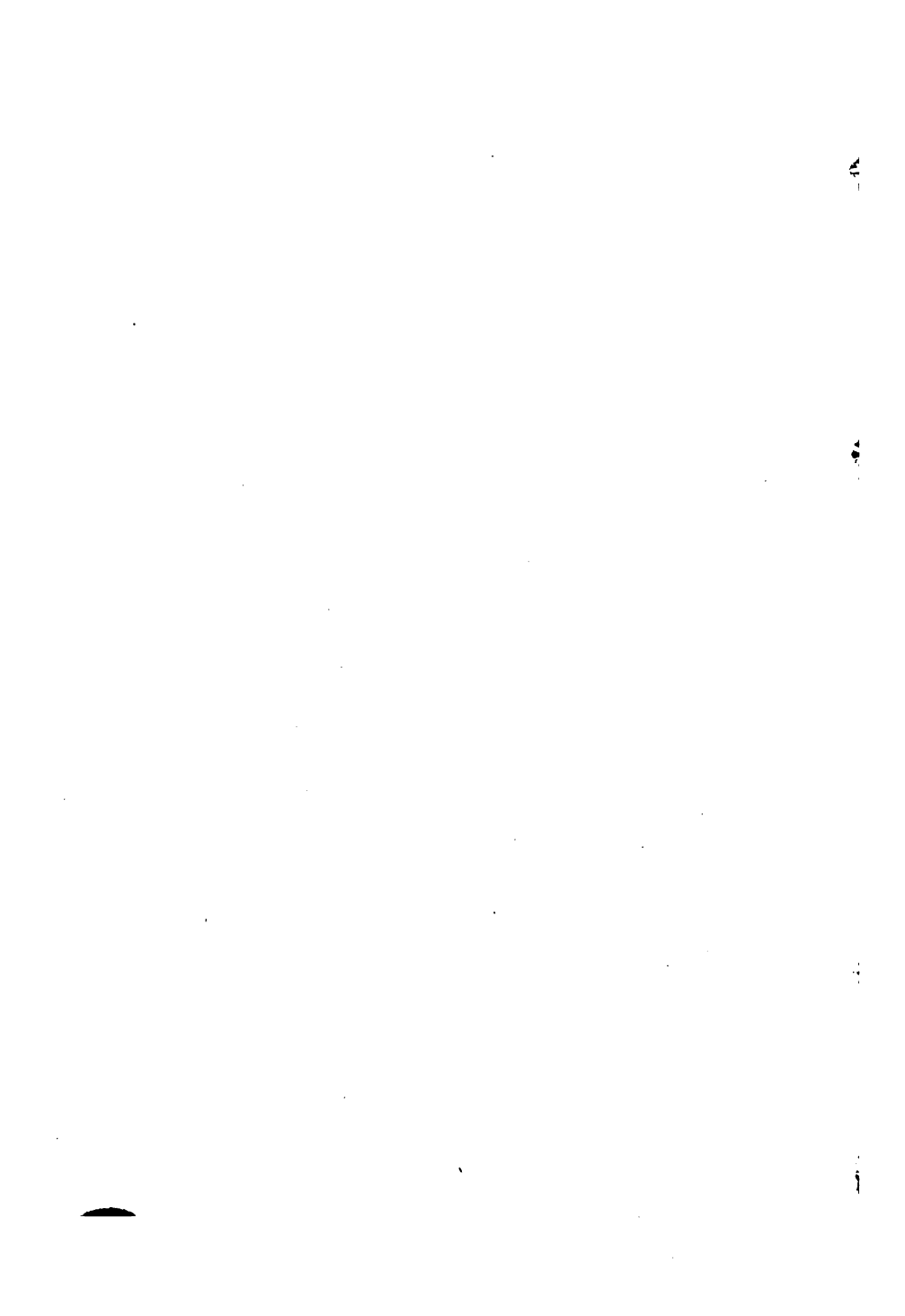
This book is not an historical or legal treatise on the intricate and difficult questions involved in a consideration of a proper adjustment of the relative powers of city and state. It is not "home rule" in its purely constitutional or legal aspects that we are considering, but rather

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the broader sphere of the whole problem of the possession of adequate powers by a city to supply its own municipal needs, and render the fullest possible service to its inhabitants. In a survey of so broad a field, little more can be done than outline the main lines of recent development, analyze the factors or influences at work to accomplish effective results, and point out with a minimum of argument the obstacles to be removed and some of the ways that are being tried to remove them.

Without contending for the absolute superiority of a particular form of government for cities, or attempting to maintain that certain instrumentalities must necessarily be accepted, the author tries to hold consistently to the point of view that until municipal home rule is established the American city can never really fulfill its municipal destiny.

**THE EMANCIPATION OF THE
AMERICAN CITY**



THE EMANCIPATION OF THE AMERICAN CITY

CHAPTER I

THE PROBLEM OF HOME RULE

THE municipal problem only became a real problem in the United States as urban growth became the great factor in our national growth. When the problems of social and industrial life were simple the problems of government were simple. Statesmen had devoted their best efforts to the construction of constitutions for state and nation, and with little or no consideration of its fitness the federal form had been superimposed on the cities. They did not see the necessity of working out a municipal system based on practice and experience. They had no understanding of the factors involved in municipal administration and they saw no reason for ever attempting to formulate correct principles of municipal government. Under these circumstances there could naturally be no

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conception whatever of the meaning or significance of municipal home rule.

Except in its purely administrative aspects—and even there at bottom—the municipal problem in the United States today is the problem of home rule. Before considering the specific but always closely inter-related problems involved in the greater phase, however, it is worthwhile to take a broad, general survey of the situation in order to disclose the controlling factors in the situation and the character of the obstacles in the way of a solution.

The imposition on American cities of a system of partisan political control identical with that which prevailed in the state and nation, was a matter of comparatively late growth. The two factors which made such an extension of control both natural and logical, the creation of powerful political organizations and the extraordinary development of cities, did not at first exist. They became potent only as national political parties, impelled by the expansion of the nation, began to transform themselves from loosely organized groups of men who held the same views on public questions, into great political machines, capable of concerted action over a wide area and insistent on imposing and enforcing their tests of political faith on an

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ever increasing body of public office holders. The rapidly growing cities offered a ready means of meeting the needs of these great partisan machines and the system once fastened on the cities has maintained itself to this day. It has always proved the chief obstacle in the way of a progressive development of our municipal institutions. It has always stood in the way of all attempts to readjust on a proper basis the relative powers of city and state.

In the early days of the Republic, almost the only powers exercised by a city government were police powers. Local self-government concerned itself chiefly with the preservation of order and the safe-guarding of life and property. There was small room for radical differences of political opinion in such matters as these. Local office holders were for the most part unpaid, and there was no particular advantage in any political party obtaining control of the machinery of local government.

It was at first the exception rather than the rule, when there was any party division on local government problems. Those were the days of loosely organized political parties, the days before party conventions or party committees. The machinery as well as the functions of local government were extremely simple. It was

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easy to find out what was being done and easy to discover what public officials to hold to account. To be sure, in the first fifty years of the Republic, there were in some cities local political organizations that sought to obtain office or preferment for their members. The advantage of working agreements in local affairs was beginning to be considered by those who were interested in extending their partisan influence to wider areas.

With the Jacksonian era came a change. National political parties took on a new meaning. As new states were admitted to the Union and political organizations spread over a wider geographical area, it was found necessary to create some workable and authoritative machinery of party organizations that would make possible cooperation in promulgating partisan doctrines and in presenting the claims of partisan candidates for office. The political theories that were born with the Jacksonian democracy were of the sort that made political leaders quick to see the advantage of office holders as instruments in making such an organization effective.

Political offices were created in order to provide places for men who would carry on this work. The comparatively short ballots of the early days gave place to a system in which elec-

tive officers were multiplied to an extraordinary degree. Office holders were chosen not for fitness but for partisan purposes. The saying, "To the victor belong the spoils," was made to mean something by creating spoils in the shape of public offices. National and state governments did not afford a wide enough sphere for these political spoilsmen and they turned naturally to the growing cities as fields for their political exploitation. Thus it was that municipal governments were thrown into the cauldron of partisan politics and the habit of selecting local officers on the basis of their affiliation with, or service to, one of the great national political parties became established. Starting with the proposition that our national, state and local governments should be administered independently of each other, the necessities of party organization rather than the necessities of government rapidly developed a situation where each was made to a considerable extent dependent on the other. As it has well been said, local governments and national governments were pooled to furnish spoils for the active members of the great political parties.

While this process was going on the "average citizen" appeared to take little or no notice of it. He had grown up in a situation where

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local government was a simple matter. It appeared to him to be run in a fairly satisfactory manner, his life and property were usually pretty well safeguarded, and he was left to devote himself to his private pursuits. What more could he ask? More and more, as this attitude toward city government prevailed, the business of running the government fell into the hands of active party workers. In the belief that municipal public service did not require any great degree of efficiency or ability, or afford an opportunity for advancement, the best men ignored such service with the result that municipal offices were filled with incompetent party hangers-on who clogged the machinery of local government and made any sort of efficiency wholly impossible.

These were the lines of development up to the time of the Civil War. With the coming of peace and the new prosperity that followed, came periods of speculation, the opening up of new regions to settlement, and the rapid building of railways. A wonderful increase in the commercial and industrial prosperity of the country took place. Commerce and industry created new cities and gave new life to old cities. The years that followed became chiefly remarkable for the extraordinary growth of

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urban communities. Gradually cities were called on to perform services that had never before been performed by local governments. The development of traction interests both urban and inter-urban, the development of piers and wharf properties in sea ports, the increase of poverty and crime, greater dangers to health due to overcrowding, drainage, the necessity for better fire protection, all these things presented serious problems that pressed for solution. But the residents of our cities had for the most part done their political thinking on national party lines and had accepted without question a condition that had come down to them from the past in which the officers of their local government were merely partisan tools who looked to the party rather than the city for direction and were paid for their work not by the party but by the city, which could not be greatly or directly interested in such issues as specie payment, reconstruction, or the tariff. Such a system made possible and easy the creation of political rings and machines in our municipalities. Under these circumstances, municipal reform was slow in coming. Citizens had a complacent self-confidence that things would work out all right in the end. Relying on the vitality of free institutions they felt that

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there was enough inherent strength in them to solve all the new problems without their needing to bother about them.

They did not at first recognize the fact that new life and new ideas were needed to cope with these new issues and to solve these new problems. They acknowledged that conditions were bad, that change might improve them—indeed, even that a change was necessary—but their fathers lived and thrived in communities controlled and administered in the same way and by the same influences that ruled their cities and they could not see exactly why it was necessary to exert themselves any more than their fathers had done. “It will work out all right,” they said, and kept on saying it while conditions grew worse. Only when it became apparent that the life of the very free institutions on which they had relied was threatened, did they begin to wake up. They began to realize that the comparatively simple expedients of government of their fathers were not fitted to assure the continuance of these same institutions today with the same degree of comparative efficiency and the same measure of service. They began to appreciate that they were confronted with a serious municipal problem. The wonder is that this system did not break down more

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completely; that it did not, must be considered not as a vindication of the sort of government they had, but rather as an indication of the inherent strength and tenacity of the venerable principles of local self-government.

This was the background of complacent acquiescence in civic inertia that those who first seriously began to devote themselves to a study of the municipal problem discovered. The immediate problem was three-fold. It required first an understanding of the reasons for existing conditions, then the construction of a brand new set of principles to be applied to the solution, and finally and most difficult of all the transformation of this inertia of acquiescence into an active force of protest, that would in time compel the acceptance of the new principles. Only partially and very incompletely has this latter result been achieved.

It was clear at the outset that [one of the most serious obstacles in the way of success was the activity of national political parties in the field of local politics. That evil, as already pointed out, has meant the habitual sacrifice of real local needs to the partisan needs of a national political party; it has meant legislative interference with the affairs of cities by means of mandatory legislation frequently for purely partisan ad-

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vantage; it has meant a general disorder in city affairs and a complete lack of any sense of civic responsibility; it has meant extravagance, waste, inefficiency and mal-administration.]

Another obstacle appeared in the fact that existing forms of city government were clearly unsuited to meet the demands of a complex modern city in which purely administrative functions—that is to say business functions—outweighed the political functions nine to one. A third obstacle was disclosed in the wholly inadequate powers of a city to control its own budget, its own officers and employees, and its own property. The difficulty here involved not only the conferring of larger powers on cities that would enable them to exercise this control but, as will be developed in a later chapter, a change in the long standing attitude of the courts in construing municipal powers, not liberally, but narrowly.

The endeavor to find some remedy that would tend to cure all these municipal ills, has led to the conviction that the only solution lies in a recognition of the city not only as a political organization fully capable of governing itself for the best interests of its own inhabitants and with full consideration of the interests of the state as a whole, but also as a social or ad-

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ministrative unit, able and fully equipped to do its own municipal housekeeping. In brief this means home rule.

There are many ways in which cities may be likened to individuals. Cities develop traits or habits of thought or methods of work very much as men do. A man who never has an opportunity to test his own capacity for accomplishment, who has never been called on to undertake anything which would develop his confidence in himself, who has never felt the sense of responsibility for his acts, will not ordinarily develop a capacity for achievement, a self-reliant spirit, an ambition or determination to do things for the welfare of those who rely on him and are entrusted to his care. In other words, he may never really "find himself."

It is much the same with a city. A very great deal of the distrust expressed by those who doubt the wisdom of municipal home rule, can be traced to the fact that the critics are fearful that cities will not be able to stand the test. These doubters fear that the effect of granting extensive powers of home rule to cities will put too great a strain on the cities and their inhabitants. They are afraid that the residents of a city will not be able to manage its affairs by themselves so well as they have been

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managed in the past, with the assistance of a state legislature. They are fearful that the imposition of new duties and new powers on the city authorities will raise new political issues that will be capitalized by political machines. They think they see a greater field for the exploitation of the city by "special interests," political bosses and machine rings. They are apprehensive that the right of citizens will not be so well conserved as under a system in which the strong hand of the state is forever extended to correct evils, check extravagances or maintain a proper balance. They seem to be convinced that the municipal rulers will straightway embark into all sorts of municipal profligacies and extravagances without let or hindrance. They conjure up ghosts of municipal bankruptcy; they prophesy an impairment of the sovereign rights of the state; they see state laws ignored and view with concern the destruction of the historically sacred doctrine of the separation of powers.

When you come right down to it, what these critics have in mind, but what they are afraid to express in so many words, is a distrust of the ability of the people of a city to rule themselves. Possibly they would not go so far as to express a distrust in democratic government.

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But the thought is there. Its origin is clear. And it must be admitted that a review of the history of municipal government in America would seem to indicate that this distrust is more or less justified. For certainly until recently there has been little if anything in the long history of scandal and neglect and gross mismanagement in the government of our cities under old conditions to justify a hope or faith in the ability of cities to govern themselves in such a manner as to afford the best government for their citizens. But what these critics do not remember or appear not to see is that had this spirit of distrust prevailed over the hopes of our forefathers, it would have had the result of frustrating all their attempts to establish a democratic form of government in this country. The men who left Europe and settled in this country entertained no doubt of their ability to govern themselves for their own highest good. History has justified their self-confidence. No student of history can doubt that their successors on whom is imposed the task of governing our American cities would likewise furnish an example to posterity if given a chance.

The very fact that throughout a long century of neglect, and despite repression and discouragement the spirit of free local government

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which our forefathers brought with them across the Atlantic, has remained alive in the land, and is now showing unmistakable signs of asserting itself, is indication enough of the baselessness of the fears expressed by these cautious conservatives. Local government comes closer to the people than any other. It is basic. It is through its exercise that men acquire most of their political schooling and become familiar with what free democratic institutions mean. As de Tocqueville phrased it in his discussion of American local government, "Municipal institutions are to liberty what primary schools are to science; they bring it within the people's reach; they teach men how to use and how to enjoy it. A nation may establish a free government, but without the spirit of municipal institutions it cannot have the spirit of liberty."

There are certain reasons, however, in addition to the historical one, why these doubts as to the capacity of cities to govern themselves, so far as they affect the future may be looked upon as unjustified and baseless.

The history of the municipal movement in the United States during the past decade has proved beyond all doubt that cities can be trusted to govern themselves without ruining themselves financially, without placing

themselves at the mercy of political rings, and without in the least destroying either the sovereignty of the state, or their own representative form of government.

To begin with, as a basis for our confidence, we have the existence of a new municipal spirit and the growth of a stronger sense of municipal solidarity and responsibility. Under these conditions in practice the conferring of enlarged home rule powers on cities has had the effect of greatly increasing the sense of municipal responsibility. By bringing the city government closer to the people it has aroused interest in municipal affairs and civic agencies to a greater extent than ever before. With every increase in the power of a city to do things, there is an increase in the interest of its citizens who are concerned in seeing that what is done shall be done right. Thus the broadening of the scope of a city's educational system, its attempt to bring education into the home, to provide night schools and vocational schools, cannot but arouse a greater interest in what the city is doing in all who are interested in education or who are seeking knowledge. Thus, also, the entry of cities into social work of one sort and another, their interest in the proper housing of their inhabitants, in solving problems of conges-

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tion of population, in affording adequate transportation facilities, in providing better markets, in decreasing the death rate of babies—all these things bring the government closer to the people.

Under the conditions existing in our municipalities a quarter of a century ago, most of these things were scarcely conceived of as likely to come within the range of municipal activity. There are few cities in the country that are not making progress along these lines today.

✓ The wonderfully rapid growth and development of cities, the massing of population in cities, has served to force a consideration of the city as something more than the mere agent of the state, and to bring about a realization that the city is primarily an organization for the satisfaction of the needs of its inhabitants. As it became clear that the constitution, the laws and the courts stood in the way of a proper adjustment of the city to this larger field of service, men set their minds to working out a solution of the problem. As Dr. Frank J. Goodnow has put it, a "study of the history of municipal development shows us that the too extensive exercise of the control of the state over the municipality prevents the development in the municipality of that local life whose existence is so

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requisite to the proper occupation of that great field of activity opened to the modern municipality by the social development of the nineteenth century."

It took very little study to see that the difficulty could only be removed by conferring on the city itself a considerably larger measure of power to do the things necessary to satisfy these growing needs. There and then started the demand for municipal home rule. The demand in its inception, it will be seen, was based not so much on a feeling that there needed to be a reversal of the traditional legal theory as to what constituted state powers, as to a realization that the city alone could safely and adequately occupy the new fields of activity and opportunity that had been developed with the increasing complexity and variety of urban growth.

Many of the things necessary to satisfy these needs, to be sure, can be accomplished under old form charters or under existing state laws, and in spite of certain constitutional restrictions. But they are all a part of a city's power to control its own affairs for the highest good of all its inhabitants and as such are clearly home rule powers. And it is every day growing clearer that the most complete and satisfac-

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tory working out of these problems cannot be had if a city is hampered and handicapped by needless constitutional restrictions and compelled to worry along under a form of government ill-suited to its development and created under an historical misconception of a city government as a mere political agent for the enforcement of state laws, rather than a complex social and business instrument, entrusted to the care of the people who live under it, to use for their own highest good.

CHAPTER II

THE BASIS OF HOME RULE

BEFORE entering into a discussion of the various means that American cities, operating under a variety of constitutional and statutory grants of power, are adopting to enable them to control their own property, affairs and government, it is worth while considering what the essential basis for municipal home rule really is. We shall find this as easy to define as it is difficult to construct and maintain. We shall readily discover that municipal home rule, to be either permanent or effective, must rest not alone on charters and statutes which are subject to change by every succeeding state legislature, not alone on the habitually strict judicial interpretation of a city's power, not alone on vigorous and intelligent determination of the people of a city to control their own affairs. Nor, it will be evident, would all three of these factors working together be sufficient. The true basis of municipal home rule must be a constitu-

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tional grant of power sufficiently broad to enable cities to rule themselves so far as their own government and affairs are concerned without outside assistance or interference. Such a grant must embody in the basic law of the state a broad statement of the home rule principle which will have the effect of marking out a well-defined field in which cities may exercise their exclusive authority.

—When this has been accomplished it lies within the province, and it must be made the duty, of the legislature to fill in the framework by appropriate general legislation; it remains for the courts to define and determine on a broad and liberal basis the extent and application of the constitutional grant; it lies finally with the people to justify the faith thus expressed in their capacity to govern themselves by the constant exercise of a vigilant and jealous insistence on their rights and by the free and intelligent choice of public officers who will see that the affairs of the city are administered for the benefit of those that dwell therein.

To understand why it is so essential to have a constitutional basis for municipal home rule in the United States it will be necessary to review briefly the steps in the development of city government in America and find out just why

it is that we must have a constitutional grant in this country while European cities, enjoying incomparably greater freedom of self-government, get along without it.

The analogy has often been drawn between American and European cities and the legitimate argument advanced that we ought to learn much from the government and administration of cities in the old world. There is a great deal of truth in this statement, but it can only be taken with reservation. We cannot, for instance, argue that what is or has been true of European cities must be true of American cities. The principal difficulty in such an analogy lies in a fundamental difference in the political conception of the relationship between cities and the state in this country and Europe.

European cities have a definite legal status. But they have no legal rights or powers as against the state. They are subject to the practically unrestricted will of a central authority. That this will is not autocratically exercised and that they enjoy a large measure of home rule is due not to statutory or constitutional provisions or even to powers conferred upon them by their charters, but rather to the enlightened policy which the central government has adopted toward the cities. This attitude

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has been one of forbearance in the exercise of the autocratic control which as a matter of fact it possesses. European cities enjoy home rule by custom or by precedent rather than by statutory right. In emergencies the central government can and does assume the powers which it has allowed cities to exercise. We have had numerous examples of this in Europe since the outbreak of the Great War, particularly in Germany, where the central government has seen fit to exercise powers in municipalities, or has dictated matters of municipal policy, under a species of martial law, which it has heretofore allowed the cities to exercise undisturbed.

Home rule in the United States, therefore, must be considered in a different light from home rule in Europe. To a European, municipal home rule means the enjoyment of rights based on long established custom. Here in the United States it means the enjoyment of rights granted by the law and the constitution.

Because of this difference in the fundamental basis of municipal powers in Europe and America, there is no parallel in Europe to the great body of statutory and constitutional provisions protecting the property and rights of individuals and protecting municipalities against the interference of state legislatures which has led

in the United States to the development of a great system of public law regulating municipal corporations, entirely unknown in Europe.

The problem of municipal home rule in the United States is the problem of a proper adjustment of the relations of the city and the state, a delimitation of their respective powers, a limitation of the authority of one and the other.

No question has been more frequently the subject of legislative and legal squabbles and conflicts of opinion. No problem has been more frequently in the courts than that dealing with the relative powers of the state and the municipalities within its boundaries. This has been true not alone of those states in which there has not yet been any definite effort to solve the problem of municipal home rule by statute or constitutional amendment, but even in those states where so-called home rule provisions have been incorporated in the constitutions. The difficulty is primarily due to a superficial idea of the relations between cities and the state, the injustice of which we are only now beginning to comprehend. It is difficult for the courts to break away from the precedents and decisions of other days. It is almost impossible for lawmakers and constitution builders to be convinced that they are not abdicating any

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essential and proper power of the state when they grant cities home rule. It is hard for a legislature to forego its long-time habit of meddling in the affairs of localities. Yet these things must be stopped before we have municipal home rule. The constitution-makers must provide boldly for a change in this relationship. The legislature must accept the new situation and keep its hands off the cities. The courts must adopt a new point of view in regard to the construction of statutes, shifting the presumption in case of doubt as to the possession of a certain power from the state, where it has been lodged, to the city where it belongs.

X A fundamental difficulty with the delimitation of the powers of a city and the state in this country lies in the long accepted legal conception of the character of a city not as primarily a self-governing community but as a corporate body and agent of the state, and of the judicial interpretation of its powers based on that conception. At the start there was the rule of law which conceived of the municipal corporation, as a mere creature of the state, enjoying only such powers as were specifically delegated to it. Lacking a broad general grant of powers, it was held that the city possessed only such powers as were specifically granted to it. In

cases of doubt the authorities, judicial, executive and legislative, proceeded on the theory that the burden of proof was on the city. This presumption was upheld in the courts and generations of piled-up precedents have formed a rigid legal barrier that it is difficult today to shake.

What a tremendous handicap this has proved to our cities it is easy to see. It is clear that any attempt to provide cities with home rule powers must strike at this root of all the evil.

Instead of proceeding on the assumption that a city has only the powers enumerated in its charter and that for the authority to do anything else it must obtain a grant of power from the legislature, the advocates of home rule are coming to take the ground that the constitution must provide a general grant of powers to cities. They hold that this general grant should give cities the right to frame, amend and adopt charters and to regulate matters relating to their own property, affairs and government, subject only to the constitution and the general laws of the state. It will be readily seen that this readjustment of the idea of the relative powers of the city and the state means a reversal of the traditional rule of law in which the presumption was always in favor of the state.

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This distorted conception of the political character of cities came to be established in the United States through one of those amazingly illogical institutional developments that have provided so many striking inconsistencies in our country's history. The colonial charters based on royal grants were looked upon as mere certificates of incorporation which were unchangeable so far as the grantees were concerned but which might be modified or wholly abrogated at any time at the will of the grantor. With the earliest beginnings of city growth in the colonies, it became evident that some sort of charters ought to be granted them under which they might carry on their simple governmental functions. So we find the earliest city charters in this country simple statements of incorporation with a grant of authority which enabled the citizens to carry on their local government in the restricted field that municipalities then occupied. These early charters, which were based so far as form is concerned on the municipal charters then in force in England, were regarded as contracts between the residents of the city and the central authorities. So far as powers conferred went they were little more than grants of authority for the exercise of police powers as the agent of the central power.

They proved fairly adequate, however, because the preservation of order and the safety of the citizens was about all the governmental functions then exercised by local officers, and because none conceived then of a condition in which cities would be compelled to enter upon the construction and operation of great public works, or concern themselves at all with the social and economic life and welfare of the communities.

As a matter of fact cities were probably in many respects freer to do a great many things of their own accord under these simple charters of incorporation than they are today, but they did them, not because they were actually empowered to do them, but merely because no central authority was enough interested in their local affairs to question their right to act. Then came the American Revolution. It was not until after this that the cities of America and their English prototypes began to assume divergent lines of development. In England the old borough type of city government, fostered rather than restricted so far as its powers of local government were concerned, gradually evolved into the English city of today with its extraordinary control over its own affairs and government. In America, on the other hand, the

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development was in the direction of a restriction rather than an increase of local powers.

It was at this point too that American cities began to be fettered by the imposition of charters patterned on the federal plan, with its separation of powers and frequently following the federal analogy even to the establishment of a bicameral local legislature. This practice became rigidly fixed through the custom of granting charters by special acts of the state legislature by means of which the lawmakers imposed on cities the only form of government they knew anything about, without any real consideration of whether or not it was the form best fitted to municipal growth and development. That they had no remote conception of what that growth was likely to be is the only possible explanation of such unstatesmanlike procedure. These city charters, besides imposing a fixed form of government, as a rule set strict limitations on the powers of cities, the early state constitutions usually emphasizing the restriction by conferring the exclusive legislative power on the state legislature and ignoring the existence of cities entirely. As a rule these early legislative charters merely conferred the customary police power, granted a limited judicial authority to be exercised

through local courts and magistrates and gave the cities control of such public property, usually of small importance or value, which the charter itself intrusted to them. There was of course no power to tax, no authority to acquire property or to construct public works, nor to provide for the welfare of the inhabitants.

It was this narrow restriction of its powers both by the terms of the state constitution and of the charter, no less than the handicap of the rigid and cumbersome federal form,* narrowly interpreted and upheld by the courts, that led to the practice of cities seeking relief from the state legislatures whenever the necessity arose. Naturally as cities multiplied and increased in size, their needs grew likewise and this recourse to the relief of special acts of the legislature grew more frequent. At first the evil effects of the practice were not appreciated. In the beginning the legislatures did not often seek to arrogate to themselves unlimited authority over the cities and were in practice inclined to act only when asked to act by the cities themselves.

* How this peculiarly distorted view of the sacredness of the federal form has persisted, was emphasized as recently as March, 1917, when a justice of the New York Supreme Court expressed the extraordinary opinion that a form of city government which, like the commission or city manager form, did not provide for the separation of powers, was in conflict with the provision of the Federal Constitution assuring a republican form of government.

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But as precedents piled up the habit of interference, once formed, became rigidly fixed. Two factors contributed to increase the frequency of legislative interference. One was the growth in power and influence of the great political parties; the other was the growth of the cities themselves not only in wealth but in the political influence that came with the massing of great bodies of voters. The political party leaders, acting through the legislature, were not slow to realize the value of the city as a partisan asset. But to them it was not an asset to be conserved but to be exploited. Slowly whatever there was remaining of the contractual character in city charters disappeared under the stress of this new political need. It was this assumption of authority on the part of legislatures, sustained in the courts by short-sighted or narrow-minded judges, who followed rigidly the letter of the law but ignored the spirit of it, that became the principal source of the numberless municipal ills, and constituted the greatest burden that cities fell heir to. It was the thoughtless and selfish abuse of this legislative practice for partisan purposes that in the end gave rise to the demand for municipal home rule.

So serious had this situation become in the

years immediately following the Civil War that men with foresight began to cast about for means to check a tendency which they had come to realize was increasing daily the burdens under which cities were laboring. Even then they did not fully appreciate the situation. They did not at first—nor indeed for many years to come—attempt to attack the problem by attacking the partisan oligarchies which ruled our cities. But they did see clearly that legislative interference was threatening the very existence of local self-government and they sought some effective means of checking the evil. Their efforts were first directed at limiting or prohibiting special local legislation. The means adopted were different in different states, some attacking the evil directly and others in a more or less roundabout way, some relying on statutes, others providing constitutional checks. Where an earnest effort was made to solve the trouble these various provisions worked with more or less success for the time being. But the ingenuity of politicians, itching to meddle in local affairs, found numerous ways to circumvent both statutes and constitutional provisions. In so doing these legislative tinkerers were almost certain to be upheld by literal minded judges whenever the question of a city's powers

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as against that of the state was submitted to them. New York State, for instance, adopted the plan of a classification of cities in its new constitution of 1894, and accorded cities the power of the suspensive veto on legislation affecting them, whereby cities were supposed to be able to prevent the enactment of any legislation they did not approve.* The scheme of classification had been tried on many occasions before this, but it had proved too easily circumvented to be of any real or lasting value. Provisions restricting the legislatures to the enactment of general laws for the incorporation of cities were likewise easily weakened or perverted and it was soon recognized that without some adequate constitutional grant of power to cities any scheme of general legislation left the cities about as badly off as they were before. Likewise the uniform charter idea was found to be inapplicable with any degree of success where cities varied largely in size and characteristics. So although these attempts at solving the problem did in many instances serve to check the flood of local legislation temporarily and did provide some safeguard against unrestricted anti-home rule legislation, it soon became evident that they did not really put a stop

* See Appendix A.

to the evil and had no real effect so far as an increase of home rule powers was concerned.

A more fundamental attack on the evil consisted in the incorporation of so-called home rule provisions in the constitutions of several states. The first state to adopt such a provision was Missouri in 1875. California followed in 1879, since which time ten other states, twelve all told, have provided with varying degrees of completeness for a constitutional grant of home rule to cities. The other states in the order in which action was taken are Washington, 1889; Minnesota, 1896; Colorado, 1902; Oregon, 1906; Oklahoma, 1908; Michigan, 1908; and Arizona, Ohio, Nebraska and Texas, all in 1912. These various constitutional home rule grants differ considerably both as to definiteness and scope. It is only natural that the judicial interpretation of their meaning should have accentuated the difference in many instances.*

There appeared at first in these so-called home rule states a natural tendency on the part of the courts to construe the grant of home rule powers narrowly in most instances. It is im-

* We have only recently had the benefit of a full and scholarly study of the constitutional and legal aspects of municipal home rule, as set forth in the laws and constitutions and interpreted by the courts, in the exceedingly valuable volume by Prof. Howard Lee McBain, of Columbia University, "The Law and the Practice of Municipal Home Rule." (Columbia University Press, 1916.)

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possible here to follow or to discuss in detail the many specific instances which illustrate the practical working of the home rule provisions, or the curiously divergent construction put upon the grants in different states where specific problems involving the meaning or scope of the constitution or statutes based upon them, have been submitted to the courts for determination or definition. A cursory study of the practical operation of these provisions and of their judicial interpretation makes it clear, however, that it is unhappily true that home rule grants in a state constitution, however necessary as a basis for home rule, have not by any means in all cases assured adequate local government powers to the cities.* It is equally true that home rule means different things in different states both as observed or applied by the state legislature and as interpreted by the courts. In view of this perplexing situation the question will naturally arise whether there is ever likely to be found a solution of a problem that in itself is conceived so differently and on the whole presents an aspect of such limitless uncertainty and chaos? Important as is a

* The case of St. Paul, Minnesota, has often been cited to illustrate this point. St. Paul possesses a home rule charter under the state constitution, yet between 1900 and 1911 the city charter was amended no less than three hundred and thirteen times.

changed and liberalized attitude on the part of the courts where the respective rights of the city and state are to be defined, it is, as experience has proved, neither fair nor satisfactory to leave the phraseology of our home rule provisions so hazy and indefinite as to impose on the courts the heavy burden of clarifying the meaning in such important particulars.

The task then for those who turn themselves to a solution of the problem is to frame a proposal for municipal home rule that will be full and comprehensive without being loose or indefinite, that will be explicit without being restrictive, that will strengthen representative government both in the city and the state, while maintaining unimpaired the legitimate powers of both city and state in their proper bounds, and that will leave neither to the legislature nor to the courts the duty of determining what home rule is and what it is not.

We can better understand what must constitute the fundamental requirements of an adequate constitutional home rule proposal if we realize that municipal home rule involves two essentials; first, *power* within the city to do whatever is necessary to manage and control its own affairs, property and government, without outside interference or assistance; and sec-

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only, *protection*, so far as its local affairs are concerned, from interference on the part of the legislature.✓ Real home rule cannot be achieved unless both of these essentials are provided, for the two although complementary are by no means interdependent. Cities might have the power to frame and adopt charters and to enact local legislation and yet, unless that right is made both full and exclusive, they might still be subject to legislative interference. On the other hand, it might be possible to prohibit or limit the legislature in the passage of special local legislation and still not grant requisite charter-making power, in which case cities would still be subject to rigidly restrictive general legislation or would be compelled to fit their scheme of government into the common mould of a uniform charter which would have to be applied indiscriminately to cities of greatly varying size and character. It can readily be seen that under either one alone cities could have no real or substantial home rule.*

* A proposal of Senator Elon R. Brown, the majority leader, approved by the New York State legislature at the session of 1917, attempts to put a check on local legislative interference by granting the legislature power to delegate authority to cities, and providing for a limitation on local city bills in the legislature. The proposal attempts to provide protection, but without granting to cities themselves any real power save as the legislature may from time to time delegate it. Without such a grant of power it cannot be called real constitutional home rule.

Lack of these two essentials is the source of practically all the evils from which cities suffer. It is equally true that it constitutes the most serious handicap under which legislatures labor. Without such local self-governing powers cities cannot fix the responsibility for extravagance or mal-administration nor can they properly coordinate local administrative powers with that degree of responsibility which must be the basis of all truly representative government. The division of responsibility that comes when the authority to control local affairs and government is divided between the municipality and the state clearly tends to break down local responsibility and to undermine the representative character of the city government. And finally, from the point of view of the city this lack of self-governing power acts as an invitation to legislative interference for partisan political ends, thus contributing to the payment that municipalities are compelled to make for the upbuilding and upkeeping of national political parties.

Of no less concern is a consideration of the demoralizing effect that this absence of home rule has on the state legislature itself. Under such conditions the legislature is compelled to devote a very considerable portion of its time—

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often more than half—to local legislation. In the nature of things individual legislators cannot be either greatly interested or particularly well posted as to the needs of cities other than their own, or as to the conditions in localities that demand legislative consideration. Legislators are usually compelled to take the word of someone else as to the necessity. Often they follow the virtual demands of an irresponsible or ambitious political leader whose chief interest is a partisan one, or they are forced in defense of their own local legislation to enter into bargains and “log rolling” agreements with legislative leaders, or with their fellow members. In this process the ends are often lost sight of, frequently to the detriment of the cities whose representatives are thus misrepresenting them, and with the certain result of an extreme degree of demoralization in the legislative machinery.

To provide an adequate constitutional grant based on a recognition of these essentials we may, by way of summing up, reach the following tentative conclusions.* The constitution should contain a broad grant of home rule powers to cities. The dangers of any detailed

* See Appendix A. The proposal which was submitted to the New York Constitutional Convention in 1915 was designed to cover the points here outlined.

enumeration of subjects over which cities should have exclusive control must be borne in mind, for such an enumeration is likely to be construed either as restrictive so far as the cities themselves are concerned or as a curtailment of the power of the legislature. The grant therefore should be general enough to permit of a proper degree of flexibility for the adjustment of the respective rights of the city and the state. It has been found to be possible to adjust satisfactorily the relative powers of the federal government and the several states under the federal constitution, and it ought to be little more difficult to adjust the powers of cities and the state. With the principle once clearly set forth in the constitution, it must be left to the executive, judicial and legislative branches of the government to accept and apply it. As a guide to such an acceptance several points should be clearly defined. For one thing, it should be provided that cities shall be presumed to possess such powers of self-government within the general grant as are not specifically limited or denied to them by the constitution. This cannot be rightly considered a presumption against the legislature for the legislature will, as pointed out later, still retain by definite grant the right to pass general laws even if

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they affect cities. Such a reversal of the presumption will in no wise limit the extent, but only the method of application, of the legislative power. It will, on the other hand, definitely increase the power of the cities. It would therefore enlarge the zone of common power, leaving the legislative authority always paramount so far as general legislation in respect to cities is concerned, but tending to decrease the opportunity for the legislature to do things which the city can more properly do.

The constitution should contain an explicit grant of power to cities to frame and adopt their own charters, and this right should be self-executing, and contingent upon the acceptance of a completed charter by the city electorate. This does not of course imply that charters must be drafted in a town meeting, but that machinery shall be created for the choice of a representative body to draw a charter and submit it to the electorate, a body in other words which may do for the city what a constitutional convention does for the state. Certainly we shall have taken a long step toward representative government that really represents when we have charters framed by the residents of a city who know its needs and have an active interest in its welfare, instead of by a body of men from dis-

tant urban and rural communities who can have only a dim understanding of the needs of any city other than their own, and who feel no sense of responsibility whatever to a distant constituency.

Special legislation in regard to the affairs of a particular city should be absolutely prohibited by the constitution. But the right of the legislature to regulate the affairs of cities by general laws applying alike to all the cities of the state should be just as clearly declared. Such a provision would protect the state amply against any curtailment of the legislative power. Under it the legislature could act even in regard to matters of a local character if such matters become of enough concern to the state to be made the subject of general legislation. This reservation should be made plain. If there is a shadowy middle-ground here, a region in which there may be overlapping and perhaps even conflicts, it must be remembered that there are in fact such neutral zones in respect to federal and state laws and to local ordinances and state laws at present. But the debatable ground may be narrowed by an express provision reserving to the legislature power to pass laws, even though local in their application, if the legislature determines that they are, even tem-

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porarily, matters that concern the state primarily and the locality secondarily.

Under such a proposal as here outlined in its essential points it ought to be possible for cities to attain a real degree of self-government which they now lack. Under such a proposal the legislature would always be able to enact general laws in relation to the public health, civil service, police, public education, factory and public service regulation, municipal finances and taxation, and so on, under which municipal officers might be called upon to act under their oaths of office. And under such a proposal cities, free from the demoralizing effects of legislative interference, able to frame and alter their own charters of government, empowered to make such provisions as may appear necessary in regard to their own property and administration, and endowed with a responsibility that they have never heretofore possessed, will be able to achieve in large degree actual, practical home rule.

CHAPTER III

THE MUNICIPAL BOSS AND THE CIVIC SPIRIT

THE municipal boss is a natural product of our municipal system. Its short-comings have been both his opportunity and his reason for being. The lack of uniformity in the structure of city government; the haphazard character of its growth and development; the absence of fixed standards of administration and municipal service, have all tended to the same end. But the most powerful contributing cause is to be found in the lack of power in the city to govern itself.

The relation between the city and the state has been always hazy and uncertain, but, although there has been uncertainty as to what powers the city might exercise, it was quite certain that a political boss might frequently accomplish through his partisan affiliations, what the city authorities could not accomplish under their restricted charter powers. Sometimes the boss has exercised his authority for the good

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of the city—if the good of his party machine seemed to demand it—more often to the clear detriment of the city. If his efforts at accelerating legislation benefited the city he reaped the benefit for himself or his party machine and at the same time placed city officers under distinct obligation to him by making possible of accomplishment what they themselves could not do. He never neglected, in such cases, to let it be known that the city had him to thank for what it had received. On the other hand, if he or his party failed to obtain some much-needed legislation for the city it was always possible to explain to the public that the failure lay in no dereliction on his part, or on that of the administration he controlled, but in the powerlessness of the city under existing statutory or constitutional restrictions that deprived a city of the power to control its own affairs. If through his effort or acquiescence some legislation were enacted which proved to be detrimental to the best interests of the city, the system made it possible for him to shift the responsibility. It was easy to explain that the legislature of the state had simply exercised its constitutional authority. It was not his fault that cities were subject to the whim or caprice of such an authority. He was sorry, of course, but what

could he do? If this explanation were not sufficient there was always his party to fall back on. He could appeal to all the voters of his party—nationally speaking—to stand by him. They, being obsessed with the notion acquired through long acceptance that there was some close and natural relation between local and national politics, were apt to respond. In either case, his personal responsibility was small. These are the sort of factors that have contributed to the glory and power of the political boss of the past.

Thus (it is easy to see how clearly the lack of adequate home rule powers in the city, and the injection of national party politics into municipalities, have played into the hands of the political boss. He has been always ready to take advantage of this situation, capitalizing his connection with one or the other of the great national parties, to bring about desired results. In political campaigns he and his sub-bosses have been loudest in demanding that the voters "stand by the party," but the whole history of political rings and party machines in the municipalities of the country, large and small, gives emphasis to the fact that party fealty really weighs very little with the local political machine, if its interests can be better served by a

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bi-partisan deal. Again and again the history of our cities discloses the story of the close co-partnership of political bosses of opposing political parties who make their appeal through their candidates to the electorate on the basis of a party loyalty, which they themselves, when their selfish interests are concerned, are the first to betray.

The municipal awakening of the past decade has brought about many changes, however, in partisan municipal machines. The extension of municipal civil service laws has struck at the root of municipal patronage, which is the very life of the political machine. The disclosure of the close affiliation between corrupt corporations and corrupt political machines, has been followed by restrictive legislation prohibiting campaign contributions from corporations and requiring publicity of campaign expenditures. The checks and balances of an earlier day, have given way to checks and balances that concern themselves not with theoretical political principles, but with city budgets, municipal accounting and auditing, and the safeguarding of franchise granting powers. [The boss of today is seldom in a position to give away franchises through his control of the municipal legislature.] Even where there is no statutory safeguard, the

new civic spirit vitalized by publicity will not let him. His political hangers-on and ward-workers do not so frequently get rich through various methods of graft, "honest" or dishonest. Purchases of city supplies are more carefully scrutinized. In every way the power of the political boss is on the wane. Tammany Hall will never again be the over-fattened political monster that it was in the eighties and early nineties. The Republican machine of Philadelphia, with its frank ownership and control of the Democratic machine, will never gorge itself at public expense as it once did. The same thing is true of lesser municipal rings throughout the country.

How does the boss respond to this new situation? Well, to a certain extent he responds by accepting it and adjusting himself to it as best he may. In most cases the present-day boss has grown up and come into his political power during the days when this new civic spirit was beginning to make itself felt and he has, therefore, never tasted the full powers of the boss of older days. In adjusting himself to this new situation he is giving pretty careful consideration to the problem of how to keep his machine going.

He has always been the great champion of

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laissez faire. He was satisfied with conditions. He didn't want them disturbed. So usually, when there has been agitation for a change he has fallen back on the "principles of our forefathers," and battled with all his power for the retention of all the old machinery of government that we have inherited from an impractical and careless past. Thus he has stood forth as a defender of the representative system of government, which to him has meant not only opposition to all steps toward direct legislation, but also the retention of a city legislature chosen from wards or districts, and in the choice by the electors of as many city officials as possible including purely administrative officers. He has opposed the introduction of the merit system on the ground that it was a tendency toward the creation of a bureaucracy. He has loudly bewailed the increasing tendency toward centralization, and the fixing of responsibility for appointments, declaring that such a step undermined the sacred doctrine of checks and balances, and was a move in the direction of autocracy. In fact, he has never failed to find in every reform that disturbed his control something that indicated the destruction of our liberties.

He is apt to fight political innovations to the

last ditch but his keen eyes have become accustomed to reading the handwriting on the wall, and he frequently profits by the experience of his predecessors, or his fellow bosses in other cities. Thus he has come to accept, although reluctantly, the direct primary. He meets the situation by unofficial conventions or party designations and by the enforcement of the strictest discipline among his ward and district workers. He finds that through his machine he can manipulate and circulate nominating petitions more easily than unorganized or independent groups of citizens can, so he accepts the direct primary. He views the short-ballot with supreme distrust, but hopes that somehow or other one of his "own" men will sooner or later be placed in a position where he can exercise the extensive authority that a short-ballot frequently places in the hands of a single man. He does not like the fixing of responsibility that goes with it, but he sees possibilities of beclouding the issue or raising the party standard to help him out. He fights the recall but thinks that possibly, should the recall be adopted, it "might come in handy" for his purposes some day. He swallows ballot reform and keeps a corps of "experts" at work devising means whereby its advantages to in-

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dependent voting may so far as possible be nullified. He struggles hard—hardest of all, perhaps—against non-partisan municipal elections, for here he sees one of the gravest dangers to the continued existence of his political machine. Yet, if the law requires it, he will set himself to work devising means whereby official non-partisanship may to some extent be overcome by political partisanship. In the end he will lose, but to the very end he will struggle.

Finally, there is the question of municipal home rule. Oddly enough, the political boss has convinced himself that he has discovered some good reasons for being a home ruler. He is very apt, indeed, to raise the home rule cry himself. It is a mighty good slogan for a municipal boss, but as he looks at it there are more potent reasons why he should and frequently does advocate it. He has usually had a great deal of experience in dealing with legislatures and that experience has not always been satisfactory. If his influence in his party is wide he can come pretty near to getting what he wants under favorable conditions. But there are so many “ifs” in the situation that he is usually kept in a constant state of worry.

It is only the bosses of a few of the very largest cities who have ever been powerful enough

to exercise a really important influence in the state legislature. As a rule, a city boss is still concerned primarily, to speak constitutionally, in "the property, affairs and government" of his own city. In these latter days he usually has all he can do to maintain himself in his own bailiwick, and he finds the necessity of dealing with the state legislature decidedly bothersome, even when it is not barren of results. There was a time, not so very far back in the last century, when such an undertaking frequently held rewards that were worth all the trouble. But nowadays he would rather be rid of it. So it happens that municipal home rule is one change that the municipal boss has come to look upon, if not with actual favor, at least with a considerable degree of complacency.

Consider for a moment the practical difficulties a municipal boss must face in dealing with a legislature and you have at least a partial explanation of his changed attitude. If his own party happens to control the legislature and if he is a recognized power in the party, the situation presents the simplest and most favorable aspects for him. Through his influence in the party and through his own representatives in the legislature, he can deal directly with the members from the country districts or with

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those from other cities. If he is only a "little boss" whose influence is confined to his own city, he is likely, even when his own party controls the legislature, to be compelled to defer to the wishes of some more powerful boss or bosses. Usually, under such circumstances, he takes what favors he can get as a result of bargaining and trading. Frequently he is compelled to deal on a basis that compromises his own legislators on matters of state-wide importance. If the legislature is controlled by the opposite political party, the situation is still more difficult. The basis of any trade he makes must be on the dangerous ground of bi-partisanship, where the only bonds are those of self-defense and self-interest and where any compact is likely to be abrogated when partisan necessity is removed. These are but a few of the many "ifs" that explain why the municipal boss does not feel a strong inclination to exert himself to retain legislative control of local affairs, and why in many instances he is inclined rather to look with favor on anything that will take the place of such an unsatisfactory method.

It is by no means, therefore, an easy position in which the modern municipal boss finds himself. Even though he may consider them exceptions to the rule the fates of Tweed and

Reuf are not pleasant things to think upon, and their example acts as a strong deterrent for any boss who may contemplate personally dishonest practices. You seldom find him in these days so arrogant that he will sit back and ask, "What are you going to do about it?" and he shudders at having put to him that significant question, "Where did you get it?" The simple explanation is that the latent civic spirit that has made itself felt in the past only in occasional and extraordinary emergencies, is now abroad twenty-four hours a day in every city in the land. It constitutes a powerful and fully armed vigilance committee that he must always reckon with.

It is largely because of the existence of this new spirit that present-day municipal bosses have to take many things into account that the boss of a generation ago never even thought of. He has learned, for one thing, how all important it is to the continued prosperity and life of his machine to have the most important municipal officers, who, in the public view, owe their position to him, "make good" in office. He realizes that when these men come up for reelection, it is important for him and for them to have a record of accomplishment to their credit. There must be some basis for an appeal to the voter.

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Time was when he didn't pay much attention to what the voters thought and when "orders from the boss" were the nearest approach to an appeal ever issued. But stricter primary and election laws, actually enforced, and a keen scrutiny and fearless criticism on the part of civic bodies which can no longer be safely ignored, have constrained him to give rather serious attention to matters that constitute something more than purely partisan reasons for retaining a man in public office.

He has come to realize from severe experience that any administration which his party machine puts into office must stand or fall on its record of the things it has done for the city. He is more than ready to "pander to the better element." He has come to demand, so far as the conspicuous city officers are concerned, a certain standard of service where standards have, heretofore, seldom amounted to anything. There was a time when all that any boss required—and sometimes he did not require even that—was that his followers in office should not be "caught with the goods on them." Now he insists that these same followers shall "produce the goods." There is a vast difference. There is still in every city a class of underlings in the municipal offices, the size depending on

the scope of the civil service laws, who are merely place-holders, put where they are as a reward for service to the machine. The time has not yet come when these men are required to make good, but they are usually required at least to be good. But the conspicuous city officers, especially the elective officers and department heads, are now pretty generally required by the boss to make good, not only as partisans, but as public officials. The boss does not, it is true, require this standard for the sake of the public service so much as for the sake of the party machine. But the requirement exists, and that is the important point. This is his concession to the new civic spirit.

"What are you doing here?" demanded a well-known boss recently when he discovered the assemblyman representing his district playing billiards in his district political club. "Isn't the legislature in session?"

"Yes, but it ain't doing anything," was the reply.

"Well, I didn't choose you to hang out around here," returned the boss. "You chase right back up the river and you stay there after this as long as the legislature is in session or I'll send someone up that will. I can't afford to have you seen loafing around down here."

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This was a demonstration of self-interest on the part of the boss. The assemblyman was of no real value in the legislature. Neither state nor city was actually losing anything by his absence. It was merely the looks of the thing. An old time boss would never have cared how it looked. But this particular boss did care. Things have changed.

A chapter from recent New York history indicates how this change is working with good results. Between 1911 and 1914 the Democratic party was in control almost continuously in both the state government and the legislature. Tammany Hall dominated the Democratic party. Tammany had been waiting years for the opportunity to provide a new city charter for New York City. Here was the opportunity. With a complacent governor in office and the whip hand in both houses of the legislature, it looked simple. The charter was framed. It had some good things in it, but the bad far outweighed the good, and it was clearly constructed for partisan advantage. The charter was opposed by numerous organizations of a non-partisan character which Tammany has usually ignored. It passed the Assembly by a single vote after a bitter fight. The fight was renewed in the Senate with such effect, that with all the

power apparently in their hands, the Tammany leaders did not dare to force the charter to a vote. It was allowed to die in committee. The civic spirit of New York was too much for Tammany Hall. It had not been so in the days of Tweed or Kelly or even Croker. But Murphy has learned to take into account forces which they found it safe to ignore.

As it turned out, the abandonment of the charter was too late to save Tammany which was overwhelmingly defeated in the November election. But there has been no recurrence of the arrogant spirit that controlled the organization in 1911. Within the next two years it had put its approval on a Workmen's Compensation Act, a real direct primary law, an office-group ballot law, and two of the most enlightened pieces of home rule legislation ever enacted by an American legislature. Their enactment would not have been possible without the support of Tammany legislators carrying out the directions of the Tammany boss. Whatever the impelling motive, Tammany was really trying to make a record which other than machine voters would approve.

But it is not every municipal boss that can, even if he would, manufacture a "good" record so easily as the powerful boss of Tammany

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Hall. As we have seen the influence of a local boss in a state legislature is at best restricted and uncertain, and usually the rewards are not at all commensurate with the price he is compelled to pay. If he is anxious to "do something" he must depend in the long run on such results as the men he puts into office at home are able to achieve in administering the affairs of the city. Incapable office holders, he has learned, cannot be counted on to provide a record of accomplishment that will appeal to the people even under the most favorable conditions. The demonstration of that fact has tended to improve the public service so far as the character of municipal officers is concerned. It has forced the most partisan of bosses to put capable men of standing on his municipal tickets, and into important appointive offices. But even with the best men he can persuade to take office, in control of the local administration, the possible results are apt to be small in a city that does not possess, under the laws and the constitution, the requisite powers to supply its own municipal needs, and which must be largely at the mercy of an uninformed, uninterested and capricious partisan legislature.

Opponents of home rule are sure to point out that the greatest danger in municipal home rule

lies in the likelihood that some local political boss or machine will abuse the enlarged power given to city authorities. Twenty-five years ago, with an unawakened electorate, that danger would have been a real one. Today, with a vigilant civic spirit on guard and a generation of municipal bosses who recognize and fear it, the danger is much less. With the adequate safeguards that any proper system of municipal home rule must maintain to preserve a city, for the general good, from its own follies, to force a strict accountability for their acts upon city officers, and to prevent the city from infringing on the authority of the state, the danger need scarcely be considered. As for the boss, his problem from the machine point of view, is whether he would rather continue under the unsatisfactory existing conditions of helplessness and uncertainty or whether he would prefer to have the municipal administrations empowered to do things and held responsible for what they do. He is rapidly coming to the point where he would rather have the power even if he must also take the responsibility.

The awakened civic spirit that is working a revolution in the character of our municipal institutions, and is changing the whole trend and tenor of local politics and political meth-

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ods the country over, has armed itself. And the weapon it has chosen both for offence and defense, the weapon it most frequently uses to force a consideration of its demands, and to defend the ground it has gained, is municipal home rule. That is why the strange picture is presented of the municipal boss, driven into a corner with his back to the wall, grasping in his own defense the very weapon which will sooner or later be used to accomplish his own overthrow.

CHAPTER IV.

SHORT BALLOT CHARTERS

FOR the past fifteen years there has been an extraordinary influence at work in American cities. That influence has ruthlessly attacked established traditions, toppled over historical conceptions as to what local government in this country means and shaken the very foundations of our self-satisfied and complacent regard for what has long been considered a fundamental of all our forms of city government. And in so doing it has apparently accomplished in a short decade and a half what numerous well intentioned but sporadic "good-government" and "reform" movements had failed to do, namely, dealt a body blow to the continued dominance of national political parties in our municipalities, and begun the great work of destroying completely the rule of that invisible government by local political machines which, under the colors of a national political party, have sucked the very life blood of our cities.

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This municipal revolution—it has been nothing less than that—can have but one adequate explanation. During the last quarter of the Nineteenth Century the condition of our city governments, hampered by forms of government that were both inadequate and unrepresentative, exploited for the benefit of political parties, misgoverned by untrained and unprincipled officials, treated by state legislatures as captured provinces and almost wholly lacking any real power to control their own affairs, had reached the lowest possible level. Save in a few scattered instances the very idea of a city government as an instrument of service to the community was scarcely conceived of. In them local self-government was a misnomer; they had become primarily the tributary supports of great political machines.

Under these circumstances, it was natural that the cities once really aroused to the true gravity of their situation, would be ready to grasp at any plan or instrument that seemed to promise relief from such intolerable conditions, no matter how radical in form or how revolutionary in principle. The field was a fertile one; the spirit was not dead; it was merely dormant. Already there had been many indications of the direction in which the only hope

of reform lay. Many men in many parts of the country had seen the difficulty clearly and were working to eliminate it. The only trouble was that they were for the most part struggling in the dark or were working ineffectually because they were not working together.

But the trend of thought was all in the same direction and in that direction lay success and freedom. Gradually, men who gave their attention to the matter came to arrive at certain conclusions, and on the basis of their conclusions, to formulate a set of municipal principles and policies which had hitherto been sadly lacking. Thus at the beginning of the century we had already seen some distinct advance in the right direction. A considerable degree of success followed the efforts to separate municipal from state and national elections; the cumbersome old bi-cameral city legislatures were gradually disappearing; separate elective boards of health, police, education and assessment were giving way, first to appointive boards, and then to single administrative heads. The power and responsibility of the mayor were increased by giving him often the absolute power of appointment of these department chiefs. Bi-partisan boards of all sorts—never effective or responsible—were largely discarded in favor of boards

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appointed without a statutory restriction as to national political affiliations.

Everywhere the trend was in the direction of a fixed responsibility and a centralization of authority. People were coming to see that the oft-expressed fear that such a movement would culminate in autocracy—a fear that had served to check it at times—was really groundless and that the result would mean rather a greater responsiveness on the part of the government and a fuller opportunity for the electorate to hold its elected officers responsible for their acts. This trend was recognized in many new city charters and usually resulted in improvement just to the extent that these new principles were given effect. But in no instance did the reform go deep enough to get at the real root of the difficulty. Such were the conditions and such the trend of thought on municipal matters that made the cities ready and eager to adopt the commission plan of city government with its frank concentration of authority and responsibility in a small board of elected officers and their choice on the short ballot principle.

No political movement within recent years in the United States has met with more widespread acceptance and support than that comprehended in the term “the short ballot.”

It would seem almost superfluous to have to explain at this day what the short ballot is. Yet every now and then it appears that some people really do not know. That fact was demonstrated in the campaign in New York State in 1915 for the adoption of a new state constitution, which contained provisions for a very considerable shortening of the ballot so far as state officers were concerned. There are actually some men who think of "the ballot" in its narrow sense of a piece of paper on which the names of candidates appear, and who look upon the "short ballot" with favor because they think it will be easier to handle. In its political sense the short ballot means that only those public offices ought to be elective which are important enough to attract and to deserve attention, and that the plan of election should be adjusted in such a manner that so few of them will be filled at one time as to permit the most thorough examination of the fitness and qualifications of the candidates. It seeks to eliminate the necessity of a voter's either making a vain attempt to pass on the relative qualifications of purely administrative officers, and those requiring expert or professional training, or to fall back on the alternative of looking to a party emblem for guidance. The principle of

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the short ballot has, unlike most political changes, been accepted on the one hand by the most radical reformers and on the other hand by the most conservative statesmen and legislators. It has had in it an appeal not only to the man who is politically an independent and who believes that partisan government is the source of the greatest evil in our political system, but oddly enough it has appealed even to the party boss and party machine leader, who look upon, or pretend to look upon, a complete system of party government as an absolute *sine qua non* to the continuance of democratic institutions in city and town as well as in state and nation.

The short ballot has naturally had a particularly strong appeal to those who are striving to bring about improvement in the character of our municipal governments, and it is in the field of municipal government that the short ballot has found the readiest acceptance and has most frequently been put into practice. The reason for this latter phenomena is clear; from the very beginning the short ballot has been a distinctive attribute of the commission form of government. The establishment of a commission form of government, entailing as it does the abolition of the old aldermanic and council-

manic system, and usually carrying with it a considerable reduction in the number of other elective officers, is in itself an expression of the demand for a short ballot and a recognition of the short ballot principle as the proper underlying idea for a municipal form of government.

The failure of municipal government in the United States is readily traceable, as has been already pointed out, to a form of municipal organization which was inelastic, inarticulate and incompetent and, therefore, unresponsive and irresponsible. There could be no proper uniformity or co-ordination in the city administration where the relationship between the heads of the several city departments was loose and incapable of adjustment. Diffusion of administrative functions led to confusion. There could be no such thing as efficiency where there was no concentration or centralization of authority and where, consequently, instead of working together, the elected city heads were frequently, indeed usually, working at cross purposes. In such a system it was impossible to fix the responsibility properly for maladministration or even corruption. The impossibility of fixing responsibility rendered it difficult to call any one official to account. The result has been that we have had in our cities

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a so-called representative system of government that was at its very foundations unrepresentative. A city ruled by a mayor with comparatively insignificant powers, and a dozen other elective officials, some of them executive but most of them primarily administrative, with their power in turn curtailed and limited by the whim or caprice of a board of aldermen elected by wards or districts, could not, in its very essence, be representative to any degree of the wishes or desires of the city's population.

One fundamental trouble with the government of our cities and one reason why the revolution did not come sooner lay in the erroneous belief that the more city officials elected by the people and, therefore, theoretically holding their mandate directly from the people, the greater was the representative character of that government and the more closely did it approximate the traditional ideal of local self-government. Gradually we have been coming to see that the representative character of government does not depend on the number of officials elected but rather on whether those officials, however few in number, are chosen as a result of the fullest and most direct expression of opinion on the part of the electors as to those best qualified to represent them.

It does not make so much difference nor is it a matter of really great importance that a particular ward should have a representative in the city's governing body; but it is a matter of great importance that a representative should be, not an accident of politics or the creature of a political machine, but the man best qualified to voice the needs and requirements not only of his own ward but of the whole city. And finally, no city official can justly lay claim to being truly representative, no matter how chosen, unless he has in the first place authority to represent something or somebody, and in the second place can be held responsible for his acts and called to account for them if he fails.

There is no logical reason, however, why a city should not have a fairly short ballot for municipal officers, without adopting a commission or city manager form of government. There is nothing inherently sacred in ward lines. There are few cities in which these lines have not been frequently changed within the last quarter of the century. Yet it is perfectly feasible, if a city is not ready to accept a form of government which provides for election of the commission at large, to divide the city into five large districts or wards, and provide for the election of an alderman or councilman from

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each district. If then the mayor is accorded greater power of appointment, or the authority of the council to elect other city officials is increased, it is easily conceivable that the voters of a ward at any municipal election might be called upon to choose only a mayor and one councilman. There is no reason why tax-assessors and collectors, city treasurers or city clerks, or corporation counsels, should be elected by the people at all. There can be no argument on this point so far as usage is concerned, because in almost any given state differences in practice may be found in cities of the same size separated by only a few miles.*

The development and almost miraculous spread of the commission government movement in American cities has been so extraordinary as to constitute one of the most striking revolutions in the structure of government in the history of the nation. There are few other instances of a change so radical and involving such a complete breaking away from traditional forms and inherited theories.

* Several of the short ballot, simplified charters provided for in the Optional City Charter law enacted by the New York State legislature in 1914 adopted this method. The judicial officers are appointed or elected as heretofore. The elected city officers consist only of a small council elected by wards or districts and a mayor; all other city officials are appointed by one or the other of these authorities. See Appendix.

There are no other instances in which such a momentous change has been wrought in so brief a time. Originally adopted to meet the emergency resulting from the complete inability of the old mayor-and-council form of government to handle the problems resulting from the tidal wave and flood of 1900 in Galveston, Texas, the first commission in that city provided for the appointment of five commissioners by the governor of the state. This commission accomplished its work of reconstructing and rehabilitating the city in a manner so remarkably efficient that it won strong popular approval at home and attracted wide interest throughout the country. After it had completed its work there was a strong movement among influential citizens of Galveston to continue it as a permanent form of government. The suggestion that the commission be made an elective one, however, was objected to on the ground that the greatly increased powers devolving on such a small commission might not be safe in the hands of elected commissioners. A compromise was reached, whereby part were made elective and part appointive. A court decision holding that the appointment of commissioners by the governor was unconstitutional finally forced upon the city the problem of electing all its

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commissioners. Fears were expressed as to the result but they were not justified in operation. The commission worked well, remained remarkably free from local politics and continued to provide efficient government for Galveston.

There had been several trials of a form of government by municipal commission prior to the adoption of the plan in Galveston. Sacramento, as far back as 1863, had a charter granted which placed its government in the hands of a board of trustees. From 1870 to 1882, New Orleans, as a result of municipal bankruptcy, was placed in the hands of a board of administrators, and a similar commission was created to carry on the government of Memphis after the yellow fever epidemic of 1874. In most cases these were merely temporary expedients designed to meet an emergency, and as precedents had apparently no more influence outside of the localities concerned than did the federal commission under which the City of Washington has been governed since 1878. But, possibly, because in 1900 the best efforts of students of government had been centered for several years on the problem of municipal government, whereas in the earlier years men had not even realized that there was such a problem, the Galveston prece-

dent took hold where previous attempts had gone for naught. In 1905 the neighboring city of Houston, where the progress of Galveston had been watched with keen interest, adopted a similar form of government. In 1907, Des Moines, Iowa, adopted the plan with the important addition of non-partisan primaries and the initiative, referendum and recall. The Des Moines plan, which was embodied in the Iowa municipal law, rather than the earlier Galveston plan, has been the accepted standard of commission government. By October, 1916, more than four hundred cities with a total estimated population of more than eight million were operating under variations of one or the other of these plans.

It is scarcely necessary to attempt a definition or even a description of government by municipal commissions at this day. Most people have a pretty clear idea of what it is. However, its acceptance has meant the adoption of certain principles and practices of government that take us far away from the long accepted theories of checks and balances and give fair promise of terminating forever the evils of partisan misrule and legislative interference. It is because these new forms have proved in practice so much better fitted than the old

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forms for the adjustment of municipal affairs to a home rule basis that it is worth while to emphasize some of the most important factors in the situation here.

Commission government in its prevailing form provides for the application of the short ballot principle by the election of a governing body consisting of a small number of commissioners, usually not more than five in number. Ordinarily, one of these commissioners bears the title of mayor and as such is the recognized head of the city government, but aside from presiding at the meetings of the commission and acting as the ceremonial head of the city when the occasion demands, he has little, if any, more power than the other commissioners. The commissioners are almost invariably elected at-large for terms varying in length from two to four years. In them is vested all authority, legislative and administrative. They raise the money necessary for running the city, either acting themselves as assessors or directing the work through officers appointed by them. They appropriate municipal funds thus raised in their legislative capacity and they spend the money in their executive capacities. They create offices, appropriate money for salaries and have the power of appointment and removal, thus,

under the civil service regulations, having complete control of the municipal service. Each commissioner becomes the administrative head of one of the departments into which the city government is divided, and is held directly responsible to the council, or commission, for the administration of that department.

An extraordinary degree of unification and concentration of authority is thus obtained as compared with the sort of municipal organization we have been accustomed to. But with this increase of authority has come an increase in responsibility, which is made more potent in a majority of instances by the application of the initiative, referendum and recall, elsewhere discussed. But even where these provisions are missing, the small body of municipal rulers is more easily watched than the diffused and disconnected body of officials that generally go to make up a city administration and is, therefore, more easily held to account for mal-administration. The consolidation of the legislative and executive authority in a single body removes what has proved in practice to be, not the safeguard but the handicap, of the separation of powers in so far as those two branches of government are concerned, and replaces it with a workable unification of powers. By the provi-

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sion for the selection of but a small body of elected officers at one time a municipal short ballot has been practically achieved. But aside from the form of the municipal government on a short ballot basis, there is no one influence, it cannot be too often emphasized, that makes more certainly for its success in operation and its adequacy to carry out popular government on a proper home rule foundation than the provisions for non-partisan elections which are an important part of every successful commission government plan.

In 1909, Grand Junction, Colorado, in adopting the commission form, added the preferential ballot to the scheme. A score or more of cities have followed its lead and in 1915, Ash-tabula, Ohio, introduced still another innovation by providing for the election of its commission on a proportional representation basis.

The introduction of the city manager plan, or commission manager plan, as it is now usually called, beginning with its adoption by Sumter, South Carolina, in 1912, marked the first significant change in the structure of the commission government plan. A full discussion of this plan will be found in the next chapter.

In another respect there has been a diverg-

ence from the original plan as to the basis on which commissioners were chosen. In both the Galveston and Des Moines plans, the commissioners were elected on a general ticket with power to divide the city departments among themselves after election. In 1911, Lynn, Mass., in adopting the commission plan, provided for the election of commissioners to fill specific posts in the city government. This has come to be known as the specific office plan and has been very widely followed. Kansas, in 1913, amended its general city law to provide for this method of choice. Advocates of this plan contend, on the one hand, that candidates for office are entitled to know what their positions will be, if elected, and, on the other hand, that the voters are entitled to know what offices the man they are voting for is to fill. It has been pointed out that an admirable candidate might frequently hesitate to run if he did not feel assured that he was to have the control of a particular department, and that, on the other hand, many voters might willingly support a candidate for head of one department but would not be willing to have him direct another department.

The argument for the original plan of dividing up the offices among the commissioners after

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election is based on the theory that the voters will seldom, if ever, go into the question of the technical or professional fitness of the candidates to hold a particular office but that they will continue to choose their city commissioners on a broad representative basis. It is contended on behalf of this original plan that the commission itself is better able to apportion the departments properly among the several commissioners with due consideration for their experience and ability, than are the voters to judge fairly of the comparative ability and qualifications of the several candidates at the polls. Moreover, it is contended in opposition to the Lynn plan that it tends to create five city governments instead of one, encourages friction, diminishes the influence and control of the commission over its individual members, and, therefore, lessens the effect of the unification of powers which has always been one of the chief arguments for the adoption of the commission form of government.

There is a great deal of difference of opinion among municipal experts as to whether the usual commission form of government can be made to work satisfactorily in cities of upward of a hundred thousand in population. It has been this doubt that has caused the framers of

new charters in some of our large cities to attempt a modification of the commission plan to fit conditions that exist only in the larger communities. Thus, in many instances, some but not all of the good points of the commission charters have been utilized. We have Boston and Cleveland and San Francisco, all adopting the principle of the non-partisan election and the first two named accepting even the preferential ballot. Both Boston and Cleveland have made a slight advance in the direction of a real short ballot. On the other hand, Buffalo has actually set up a commission government with but five commissioners chosen at large on a non-partisan ballot with non-partisan primaries. The results in Buffalo will be watched with keen interest by those who have not yet made up their minds whether the commission plan is adapted to large cities. A considerable degree of improvement is to be looked for in Buffalo, at any rate, because the former state of affairs under its old charter with a bi-cameral legislature was so bad that almost any change would mean an improvement. The National Municipal League's model charter does not attempt to fix the number of commissioners definitely. The suggestion is made that the number may be increased up to twenty-five in the case of larger

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cities. If more than five are chosen, provision should be made for the choice of members annually in rotation. For cities of more than a hundred thousand, it is suggested that the city be divided into large districts, each choosing a fixed number of commissioners. These large districts should not exceed fifty thousand in population except perhaps in cities of more than five hundred thousand.

It has often been said that New York City has what practically amounts to a commission form of government already. It has, to be sure, a board of aldermen elected by wards, but the real control of city affairs is centred in the board of estimate, made up of the mayor and two other officers chosen at large and the borough presidents of each of the five boroughs, which are virtually cities in themselves. Here we have large legislative and money appropriating powers vested in the administrative heads of the city government with a very considerable fixing of responsibility, and with the principal officers chosen on a ballot so short that the attention of the voter can be easily focussed on the candidates.

Commission government in American cities has proved more than a relative success. Its acceptance has meant infinitely more than the

mere adoption of a new plan of government. This idea has never been better expressed than by Richard S. Childs, the founder of the Short Ballot Organization, when he said: "No mere form of government will automatically produce *good* government. But forms *can* be devised that will automatically give *popular* government. The people's work at the polls can be made obscure, complex and difficult. Or it can be made clear, simple and easy. Under the commission plan, with its short ballot, the people's work is very clear, very simple, very easy. And that is all the secret there is to the success of the plan."

So in operation commission government has meant progress that cannot be reckoned in comparative tables of municipal expenditures or tax rates. There are many instances in commission governed cities where to be sure the much-sought advantages of lower expenditures and lower tax rates have been attained. The real point of comparison, however, is whether the expenditures, whatever their size, have been made for the good of the city and whether the taxes have been equably assessed and honestly and economically administered. In other words, the achievements of commission government must be stated rather in terms of service rend-

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ered to the dwellers in cities—services which can be seen and understood and the value of which can be estimated because they are rendered in the daylight. The old doctrine of a separation of powers had more than one significance; it meant too often merely a “separation” of statutory powers from the officers chosen theoretically to exercise them and their retention instead by the invisible government of the political machine. The new doctrine of the unification of powers exemplified in the commission form of government means government “in the open” where all can see it, and so simply organized that all the citizens can understand it and apply, if need be, an effective corrective.

In other words, the fundamental idea of this simplified form of city government means the application of the principle of a democratized responsibility operating in plain view in place of an autocratic and irresponsible machine that worked best in the dark. Such a change can result in nothing less than supplanting the rule of the politician by the rule of the people. For that reason, if for no other, it must be accepted as one of the most powerful agencies yet devised to further the cause of municipal freedom.

CHAPTER V

THE CITY MANAGER

CLEAR and unquestionable as are the advantages of the ordinary commission form of government over the old mayor and council plan, there have been disclosed in actual practice some rather serious difficulties in the way of its most successful operation. Many of these weaknesses or defects are gradually being eliminated or remedied. But the process of political evolution is not operating here in such a way as to destroy or detract from the fundamental principles upon which the extraordinary success of the commission plan is based. The introduction of that plan meant a complete revolution in our ideas as to the organization and functions of city government. The new conception of what municipal government means and what is necessary to make that meaning effective has never been lost sight of in any of the modifications or alterations in the original plan.

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The original Galveston plan worked well even when such a wholly indefensible anti-home rule provision as that vesting the appointment of part of the commission in the hands of the governor was in force. Political conditions in most of the cities of the Southern States are not such as to emphasize the importance of a non-partisan choice of city officers, and the lack of such provisions was not appreciated in Galveston. Nor did there exist so great a fear of the possible dangers in a highly centralized control without adequate means of holding that control responsible, as to lead to the adoption of provisions by means of which the voters might take matters into their own hands in emergencies. It remained for those who worked out the Des Moines plan to introduce both the non-partisan nomination and election of officers and the initiative, referendum and recall. But the fundamental principles involved in the Galveston plan were not in any way weakened; they were merely made more immediately responsive and responsible, and to that extent their effectiveness as agencies of democratic self-government was increased. Nor has the adoption of the specific office plan of choosing commissioners or the preferential system of voting altered the purpose or structure of the original plan in any important particular.

What was true of these deviations from the original plan already noted also remains essentially true of what is by far the most important change in the commission plan that has yet taken place. This was the introduction of the city manager plan, or, as it is now more correctly coming to be known, the commission manager plan. Retaining all that is best in the original plan, including the small governing board with centralized powers and responsibilities chosen according to the short ballot principle and on a non-partisan basis, and usually accepting also the additional safeguards of the recall and the initiative and referendum, the commission manager plan nevertheless marks the first really significant change in the structure of the commission government plan.

The first city in the United States to place the management of its affairs in the hands of an administrative executive was Staunton, Virginia, which in 1909 engaged an official for that purpose. This step was taken by authority of a city ordinance passed by the existing city government, which was of the old mayor and council type. In this instance, although the importance of a trained expert was recognized, there was no recognition of the underlying principle of a powerful executive controlled by a

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Small elected council that became an essential factor in the later commission manager type of charters. This latter characteristic was first recognized in a proposed charter drafted for the city of Lockport, New York, and embodied in a bill which was introduced in the New York State legislature in 1911. The bill did not pass, but it was widely discussed as an interesting and significant "innovation" in city government, and under the title of the "Lockport plan" became the model on which most of the later commission manager charters were based. The first real commission manager government was put into operation in 1912 in Sumter, South Carolina, a city of about eight thousand population, as the result of a special act of the state legislature, which gave the voters of that city an opportunity to choose between a charter of the ordinary commission type and one which provided for a commission at nominal salaries with authority to hire a city manager and fix his duties. The city manager plan was adopted by a vote of three to one. The advantages of the new plan attracted a remarkable degree of attention, and the good results obtained in the cities which first adopted it overcame the scruples of those who, although convinced that commission government did not mean an abdication

of the democratic form of government, were at first inclined to think that conferring such extraordinary powers on a single executive was going a step too far. City after city adopted the plan until by the fall of 1916 there were more than fifty cities with a population of upward of half a million living under governments organized on the commission manager plan.

A great impetus was given to the popularity of the plan by its adoption in Dayton, Ohio. A state law was enacted in Ohio giving any city the opportunity to adopt the plan, and a similar provision placed the new plan on the same favorable footing under the Optional City Charter law enacted in New York State in 1914.* Virginia, Massachusetts and other states have followed the New York plan of optional charters, including the commission manager plan. The new form of government therefore seems in a fair way to be given a thorough trial and to become an established method of municipal government. As a rule the cities which have adopted the commission manager plan had already taken the first step in that direction by the adoption of the commission plan. But there are some which have chosen to make the change

* See Appendix.

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directly from the old mayor and council form, and there are still others which have attempted to graft the city manager on the old councilmanic form. These latter cannot of course be considered in the classification of commission manager cities.*

Under the commission manager plan the centralization of legislative and administrative powers, which has been a fundamental of all true commission government charters, is maintained, but with an important modification. While under the original commission plan the voters were called upon to choose commissioners who exercised either collectively or individually all legislative and administrative powers of government, under the commission manager plan the members of the commission do not themselves administer the city departments. A small council or commission is chosen usually at large and on a non-partisan basis, just as under the ordinary commission plan. This council is vested with full legislative powers and with a general power of super-

* An example of this hybrid type of charter is the rather extraordinary form provided for in the city of Sherman, Texas. The charter retains the old mayor and council, which elects a commission of three, which in turn chooses a city manager, in whom is vested the appointing power. The manager, however, is responsible both to the council and the commission.

vision over the administration, which, however, they do not exercise directly and individually as they would under the commission plan, but through a city manager who is chosen by them and is responsible to them for the manner in which he exercises the administrative authority which he possesses, under their control and direction. The relationship between the council under this plan and the city manager has been likened both to that of the board of directors of a business corporation and its general manager, and to that of the ordinary school superintendent and the school board.

As indicated by the growing popularity of this new plan, it retains almost if not quite all the good points of the usual commission charters, and in addition has some pronounced advantages over the commission form, and in at least one important particular corrects what has frequently been criticised as a weakness of that plan. As we have seen, the original plan of the commission government charters provided that each member of the elected commission should become the executive head of one of the several departments of the city government, leaving the general direction of the administration and the determination of matters of policy to be carried out under the direction

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of the council as a whole. In practice it was found that there were in many instances serious difficulties of adjustment and operation under this scheme. It was discovered for one thing that the commissioners were often not particularly well equipped to be the heads of administrative departments, although they might be men of admirable judgment where matters of policy were concerned. Under some commission charters, as we have seen, the commissioners were authorized to divide up the departments among themselves after election. It often happened under this system that bickerings and personal jealousy worked to the detriment of a proper carrying out of this plan. Sometimes the offices were divided on what was virtually a trade basis. It was very seldom that there was not at least a compromise somewhere. These obvious difficulties led to the adoption of the so-called specific office plan of choosing commissioners, under which they were elected to be the heads of particular departments. Under this modification there still remained the difficulty of trying to make the voters of the city the best judges of the special fitness of a particular commissioner to undertake the direction of a particular sort of administrative work. In other words the voters were

called upon to do one of the very things that the short ballot is supposed to eliminate, namely, to fill offices for which frequently a special training or professional or expert knowledge is required.

In operation also it was found that the determination of questions of policy by administrative heads who had, or might have, an interest in putting that policy into effect, frequently resulted in the determination of such matters on an improper basis. The commissioner of parks, for instance, would agree to the purchase of a new fire engine only on condition that he be accorded the appointment of a certain number of additional gardeners. On the same basis appropriations were frequently determined, each commissioner striving to obtain enough money for his own department to "make a showing" of things accomplished for the city. Thus money was appropriated not primarily with the ultimate good of the city in view, but to carry out the stipulations of a political deal. It was found also that there were real evils to be met as a result of the fact that the same men who voted the appropriations spent the money appropriated.

Another tendency in the wrong direction observed in the operation of the regular commis-

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sion charters was toward the creation of five or more separate and distinct city governments, a difficulty that was increased rather than diminished by the specific office method of choice. Theoretically, administrative unity was obtained through the exercise of the general supervisory power of the council, as the ultimate source of authority and control. Unfortunately, in practice it has not always worked properly. Commissioners have sometimes felt that having received their mandate directly from the electorate they were virtually independent in carrying on the affairs of their own department. Their whole aim seemed frequently to be to maintain this independence. This resulted, just as the tendency to decide matters of policy by compromise and barter had resulted, in a lack of coordination and uniformity in the city administration which even the joint action of well-intentioned commissions was often wholly unable to overcome. By abandoning altogether the necessity of obtaining experts by popular vote and providing for the choice of an administrative executive, the commission manager plan accomplishes the result of still further unifying the administrative work of the city, and eliminates the difficulties growing out of a division of admin-

istrative functions among elected commissioners. Thus under the city manager the ideal of a centralized efficiency in administrative control is, to a remarkable degree, achieved.

The city manager is, or ought to be, chosen because of proved qualifications as an administrator. As a rule he is a man specially trained or experienced in administrative work, in directing large bodies of men, or in handling great public works. He himself picks the men who are to act under his direction as heads of the important city departments and he alone is the judge of their fitness for the positions to which he assigns them. He selects the administrative force of the city under the provisions of the civil service law, or ordinances. His appointees are directly responsible to him and he in turn is responsible to the commission for their acts and his own. Under such a plan there is never any difficulty in fixing the responsibility and it becomes increasingly easy and simple for the people of the city to ascertain where the responsibility lies.

The commission or council, on the other hand, freed from the necessity of devoting time and thought to matters of detailed administration, is left free to exercise with greater opportunity for discussion and consideration the important

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legislative functions which the charter lodges in its hands. The commissioners are better able to look at matters of general policy from an unbiased and impartial point of view and their value as truly representative law-makers is greatly enhanced. The confusion that has frequently resulted under a plan where they were both the appropriators of public money and the spenders thereof is eliminated. They are few in number and are easily held responsible not only for their own acts in determining municipal policies, but in seeing to it that the city under the direction of the manager chosen by them is properly administered.

The electorate in turn, relieved from the necessity of determining the fitness of a particular man to do a certain sort of administrative work, is free to choose its commissioners on an entirely new and much sounder basis. A prominent banker or lawyer or newspaper editor might make a very poor department head but nevertheless be especially well equipped from knowledge and ability to help direct the general policies on which the city should be run. Such a man the electors can safely place in the council under the commission manager plan, and great abilities that might otherwise be lost to the city will thereupon become a usable asset.

In another respect the quality of the commission can be strengthened under the commission manager plan. The demand upon any man to give up all his time to the direction of a city department, which must generally follow in a city of any size, frequently prevents a city from obtaining for its commission some of the best qualified men in the city. Under the commission manager plan, the members of the commission are seldom if ever required to devote more than a small part of their time to the affairs of the city, and thus the door is opened for admission to the city's service of men whose connection with the city government in a directory capacity would be invaluable. As a rule the commissioners under the commission manager plan are not paid salaries, or only nominal ones at most. It is the testimony of those who have studied this phase of the situation that the new plan has resulted in an immense improvement in the character and quality of the commissioners.

It is plainly of the utmost importance to the success of the commission manager plan that the absolute independence of the city manager of all political pressure be maintained. It is generally considered one of the most serious defects of the Dayton commission manager charter that the city manager was made subject

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(to the recall. Whatever the arguments for the recall, it certainly has no appropriate place in its application to a city manager. There has existed an often expressed fear that as long as political parties continue to exert influence enough in city politics to enable them to control elections, and certainly so long as local party machines and party bosses strive to control city officers for their own ends, the city manager's position must be a precarious one. It has been argued that under existing conditions in our cities he might even make himself the political as well as the administrative director of the city's affairs; that bosses might even enter the lists as competitors for the post of city manager. In view of this feeling it is of the utmost importance that the city manager be kept out of politics. It is because the recall provisions of the Dayton charter would tend to put him into politics that it must be looked upon as a serious violation of the approved principle of the city manager.

The fundamental value as well as the real effectiveness of the city manager lies in the fact that he is solely the administrative head of the city government, that he has no part and no actual concern in questions of policy which are primarily determined by the electorate in choos-

ing the members of the council. His work is to carry out the policies as determined by the council. He is presumed to give them the benefit of his special knowledge and to make his reports to them with recommendations based on ascertained facts as to existing conditions. But he is only very indirectly concerned with matters of municipal policy. If his position is to be permanent and if his efficiency and impartiality are to be adequately maintained he must never be allowed to assume an attitude of political independence nor must it be made possible to look upon him as the political head of the city government. This situation, the application of the recall to his office will certainly tend to bring about. It would scarcely detract more from his value and efficiency to make him an elective officer and be done with it. The moment the political character of this office is emphasized then and there one of the fundamental ideas of a centralized and responsible executive involved in the commission plan is perverted; the short ballot principle is weakened; the non-partisan provisions rendered valueless and the essential character both of the governing council and of the expert administrator is destroyed.

One of the most interesting possibilities of a proper development of the commission manager

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form of government is the tendency it would have to create a profession of trained municipal executives. Already there have been several instances of a city manager with experience in one city being called to administer the affairs of another. To render this development natural the authority now usually enjoyed which allows a commission to go outside its own borders and employ a non-resident as city manager must be maintained. In addition the non-partisan character of the city manager must be rigidly enforced. Most of the city managers thus far engaged have been drawn from the engineering profession, a natural enough tendency considering the important part that the construction and maintenance of public works plays in our municipal administration. But there is no real reason why the choice should continue to be limited to engineers and there is every reason to hope that we shall soon have men definitely setting out to train themselves for a career of public service as city managers. When that point is reached and the material benefits to a city of the employment of such experts becomes more and more evident, a long step in the establishment of municipal government on a sound basis of efficiency will have been achieved.

A careful study of the commission manager

modification of the commission form of government makes it worth while in conclusion to emphasize again the statement that it retains practically all of the strong points of the form from which it developed, with the addition of some distinct improvements. It simplifies rather than complicates the task of the voter, one of the valuable factors in the short ballot, by eliminating the necessity of the voter passing on the administrative qualifications of the commissioners. This simplification makes clearer the meaning of the election and minimizes wholly accidental or factitious influences in the result. To that extent it renders the voting more effective and increases the representative character of the commission. By unifying the administrative functions of the government it makes for harmony in the working of the departments and in the end results in greater economy and a higher degree of efficiency in the government. A little consideration makes it evident that it can be in no way subversive of popular government. The argument that the commission form, instead of being a step toward an autocratic form of government affords rather a clearer opportunity for the maintenance of a truly representative form, is applicable to the commission manager type with even greater force.

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Finally, like all governmental forms, it will work, and work successfully, just to the extent that it is upheld and vitalized by a militant and always vigilant municipal spirit. Its particular advantage over other forms lies in the fact that the municipal spirit without which municipal home rule itself could with difficulty be attained, can more readily and more certainly make itself felt under the commission manager plan than under any other form that has yet been contrived.

CHAPTER VI

ELIMINATING THE PARTIES

WE have discussed in an earlier chapter how and why the revolt against the interference of national political parties in municipal affairs has become such an important factor in the demand for municipal home rule. We have also seen how necessary to the achievement of municipal freedom are such factors as a constitutional grant of authority to cities to control their own government and affairs and the prohibition of legislative interference in the affairs of cities. It will be sufficient here to point out how inextricably interwoven are the principles involved in these two lines of development in the present movement for the emancipation of the cities.

A city may have a large degree of control of its government and be freed from the shackles of legislative interference, and yet, if its elected officers are chosen not in response to a local popular conviction that they are best qualified

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to serve the city, but because their views on the tariff or the currency question happen to be orthodox from the viewpoint of a particular political party, an essential element in the self-government of the city is lacking. [It is just as manifest that the possession of large home rule powers will not in itself mean the emancipation of the city as it is that non-partisan primaries and elections and non-partisan ballots will not alone accomplish that result? Municipal freedom means just as much emancipation from the control of a national political party, which can have only a selfish and sinister interest in its affairs, as it means emancipation from burdensome constitutional restrictions on its power to control its own affairs. The actual ideal of local self-government is reached only when the powers, however great, exercised by the elected city officers represent in fullest measure the expressed opinion of the local electorate. It is clear that these officers must be responsible to the electors they represent and not to a political party. No matter on what basis they are elected, they must, when in office, represent all the people of the city. If they are placed in office in order to carry out a definite municipal policy, they must carry it out not only for the best interests of the majority which elected

them but for the benefit of all the people of the city including the minority which expressed disapproval of the policy in their votes. But the city ceases to enjoy representative government the moment its elected officers shape their policy to suit, or give consideration to, the views of any men or group of men inside or outside the city merely because they belong to the same political party or were chosen on a party ticket.

A recognition of these propositions is considered essential to representative and responsible municipal government today. Twenty-five years back only a few saw their significance and they were looked upon as dreamers. Since that time progress toward the goal of municipal freedom has all been along these lines. It has, to be sure, been slow—but beyond any question there has been substantial progress. There are still many obstacles to be overcome; the shackles of tradition and habit must be stricken off; persistent prejudices must be removed. Even today this idea of what is necessary to make our cities truly self-governing cannot be said to be the prevailing one. Yet scarcely a day passes that it does not take hold in some new place. All this can mean only one thing—that we are at the beginning of a new era in the history of municipal self-government.

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When men began seriously to try to find out what was the trouble with municipal government in the United States in order that they might apply a remedy, they did not at once appreciate that there was any radical change necessary in the form of city government or in the method of choosing city officers. They found cities, so far as mere form went, miniature reproductions of the state and national governments, with all the machinery for the maintenance of the system of checks and balances believed to be so essential to all democratic government. But so far as actual power was concerned cities possessed little more than the ancient police power for the protection of life and property. What few powers they did possess beyond this were doled out to them grudgingly by the state legislatures, more often for political reasons than in response to a municipal demand. To all intents and purposes the state legislature and not the local board of aldermen was the real law-making body of the city. It gave, from time to time, to individual cities whatever in its wisdom or in the wisdom of the men who controlled it seemed necessary, and what it gave it always retained the power to take away.

Those who looked into the condition of cities

a quarter of a century ago found that there existed little or no understanding of the difference between the administrative functions of a city government and its political functions, and that as a result the administrative machinery was manned by political employees who ran it for the benefit of the political party to which they owed their jobs rather than of the city which paid them their salaries. In other words, these investigators found in our cities executive responsibility wholly lacking, any real appreciation of civic responsibility non-existent and the underlying principles of representative government ignored and distorted. They found that the situation could be summed up in the statement of the patent fact that city government had become a mere adjunct—although a most important one—of party government. Cities had virtually ceased to be representative, self-governing communities. They were primarily, almost exclusively, the happy hunting ground for politicians.

When those who set themselves to the difficult task of ending these intolerable conditions came to realize these facts and the immensity of the problem before them, they naturally turned their attention first to those most obvious defects which seemed to promise the great-

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est results in the shortest time. The success of these efforts, although still incomplete in many respects, was substantial and far-reaching in its effects. Thus was brought about a tremendous reform in the administrative branches of city government through the wide acceptance (and practical application of the idea of a municipal civil service based on merit. This was a blow at the very citadel of partisan political control. Through similar efforts a check was put on the evil practice of giving away public service franchises as political favors without adequate return to the city either in revenue or assured service. Stringent, corrupt practice laws were passed to assure honesty in the election of public officers and their integrity after election. The municipal legislative machinery was simplified by doing away very largely with the cumbersome and unnecessary bicameral system of local legislatures. In many states the constitutions were amended so as to provide for a separation of municipal from national and state elections. Every effort to bring about reforms in primary, election and ballot laws, and the creation of such safeguards as are afforded by personal registration laws, was encouraged. Somewhat later began the attempt to fix party responsibility for nominations and

to make those nominations more representative of public opinion within the cities, by the application of direct primary laws to the election of local officers.

At the same time an attempt to fix responsibility in matters of public policy, and to unify and perfect the machinery of government, developed in the movement to increase the authority of the mayor and in particular to give him larger powers of appointment of departmental heads, frequently without the requirement of confirmation by the city legislature, which body tended more and more to become a subordinate branch of the city government and to be deprived of its former extensive powers. Before this centralizing tendency had come to be generally accepted, however, it was given a new direction by the development of the commission form of government, in which, to the principle of centralized authority and fixed responsibility, was added a recognition of the principle of the short ballot. And, finally, there came the commission manager plan of government with its idea of the controlled executive and a smoother adjustment and more complete separation of the policy determining and policy executing machinery.

Thus, step by step, the way has been cleared

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for the acceptance of non-partisan municipal elections and a fair consideration of other electoral proposals that give promise of vitalizing the ballot and, at the same time, increasing the responsiveness of the electorate and strengthening the representative character of the elected officers. Every such step means the enlargement of the opportunities of the people of a city first to determine the policies of their city government and then to control these policies through the men they have chosen to carry them out. They all indicate substantial progress in the direction of municipal home rule. Most of them, indeed, are essential to real home rule in its broader sense. Every such advance contributes just as certainly as do the removal of constitutional barriers to the consummation of that ideal of a self-governing city, emancipated from the handicaps of outgrown forms, freed from the incubus of machine politics and possessing both the actual power and the active desire to work out its own municipal destiny.

Some of these proposals in regard to municipal elections it is necessary to pay particular attention to in this place. Perhaps no single one of these suggested reforms seemed to promise more for the improvement of political conditions in our cities than did the direct pri-

mary. From the very start of the direct primary movement it was felt that, so far as the selection of local party candidates was concerned, the direct primary would prove a much more important factor in the city than in the rural sections and villages. Often rural legislators in the discussion of proposed direct primary laws would remark, "We don't need any such thing up our way. We usually know our candidates and if we don't, we can easily find out all about them. But maybe you city folks, who don't have any neighbours, do need them." But this line of talk did not alter the conviction that the direct primary meant an opportunity never before enjoyed for the party voter to let the party leaders know the man, or the type of man in his own party, that he wanted to vote for. It was on this basis, and in this hope, that this effort to democratize the party organizations, and to provide party leaders with a proper sense of responsibility, found acceptance.

That the direct primary has done much—more in some parts of the country than in others—to democratize party organization, needs no assertion. But that it has not meant all that many of its ardent advocates hoped for it is also self-evident. Yet

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there were many clear-headed men like Governor Hughes of New York who looked at it primarily from the point of view of the opportunity it offered. They did not conceive it to be a cure-all. They did not believe it would guarantee the choice of the fittest candidate. It might even prove unnecessary in many, perhaps in most instances, but it would, they hoped, prove a really important instrument for democratizing the party whenever a real need arose.] In cases where the organization picks its candidate before the primary either by agreement or by caucus, the primary becomes practically a referendum on the organization nominee. Under such circumstances this should be an inducement for the leaders to pick only fit candidates. And thus it has frequently proved in practice. On the other hand, a candidate known to be favored by the party organization usually has the advantage of the strict organization vote. If there is no concerted opposition to the organization, he will win nine times out of ten, other things being equal. In cases of real primary contests the party leaders frequently see to it that the opposition vote is divided between two or more candidates. In respect to nominating petitions the regular organization candidate again has the advantage

of having his petition circulated for him by party workers.

But perhaps the most important contribution of the direct primary to the progressive movement in municipal government lay in its emphasizing the responsibility of the voter in seeing that the elective offices were filled with capable men. Several years ago, C. E. Merriam, in his valuable little book on "Primary Elections," uttered a warning against the danger of the notion that the direct primary would operate automatically to provide a superior type of public officials. "There is no automatic device that will secure smoothly running self-government while the people sleep," he declared. Since this was written, the direct primary has proved itself a success or a failure just to the extent that the electorate was awake to its needs and its opportunities. That it has, on the whole, aroused a larger proportion of the voters than ever before to a consideration of their duties and obligations in choosing their representatives is beyond all question.

And it has done more than this: It has familiarized the people with electoral matters as nothing else has done. It has set them thinking about the problem of representative government as nothing else ever has. In particular

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have the dwellers in cities formed the habit of looking into the qualifications of the men who are to spend or direct the expenditure of the city's money. They have gotten in the way, too, of watching these representatives more closely after they are in office. To many it has come as something of a shock to discover how far removed were the policies these officers were compelled to formulate or carry out, from the policies of the political party which was in theory, at least, primarily responsible for putting them in office. Then the awakened electors began to reason. If the direct party primary, by opening the door of opportunity to all the members of a party, had the effect of democratizing the party organization, why would it not be a further improvement to open wide the door of opportunity to all members of all parties in the hope of democratizing the whole municipal electoral system. If it were possible to shift the burden of responsibility for party nominees from the boss to the enrolled party voters, why would it not be a good idea to go a step farther and shift the responsibility for both the nomination and election of their representatives from the shoulders of one political party to those of the whole electoral body. In other words—why not conduct municipal primaries

and municipal elections on a non-partisan basis. Thus it came about that the idea of non-partisanship in city elections received an impetus from the direct primary.

To be sure there were other influences at work and a good deal of fertile ground for the movement to take root in. In many of the smaller cities it had long been the usual practice to conduct city elections on non-partisan grounds. There had been successful independent movements in many of the larger cities. There was also a rapidly growing appreciation of the fact that the business of running a city was very largely a problem of administration with very little legitimate room for politics in it anyhow. This idea was crystallized in the commission government charters, a great majority of which have provisions for non-partisan primaries and elections. But the movement did not stop there, and today there are many cities which have not commission charters, among them Boston and Cleveland, which choose their officers on a non-partisan ticket.

There are several factors of importance that must be borne in mind in any discussion of the feasibility and workability of a system of non-partisan primaries and elections. In the first place it must be remembered that we are con-

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sidering here not a doing away with party government but merely the application of a new idea to municipal elections that will eliminate, to a great degree, if not entirely, the evil influences that have been exerted by political parties in city affairs from the very beginning. We must consider whether it is really possible to apply a workable plan of non-partisan elections to city government. Then there will naturally follow a number of queries such as whether non-partisan elections really eliminate partisan political control of city government; what will be their effect on the electorate; what will be their effect on political parties, and what will be the effect on the city administration?

It may be said without a moment's hesitation that a workable non-partisan plan of primaries and elections is perfectly practicable. It may work better in some places than in others. It may even have somewhat different results in different cities or different parts of the country or in cities of varying sizes. But the one certain and definite fact to be kept in mind—a fact that offers an uncontrovertible answer to this question—is that non-partisan elections are actually working successfully in every part of the country today from ocean to ocean, from Can-

ada to the Gulf of Mexico, and that they are working just as successfully, too, in cities of half a million or more, such as Boston and Cleveland and Buffalo, as in cities of twenty-five hundred inhabitants. These plans differ in scope and in thoroughness. Their provisions are dissimilar. Some that are practically identical work differently in different places, and at different times and under different local conditions in the same place.

These systems have not always resulted in the complete elimination of partisan political control in cities. It would be too much to expect that any statute could, in a year's time, or in five years, change absolutely the habits of political thought and the methods of political action of generations. But in every instance where the new plan has actually been tried under anything like favorable conditions and in anything like effective form, it has resulted unmistakably in breaking the grip of the political parties on the city administration. It must be remembered that here, just as in the case of the direct primary system, much depends on the attitude of the great body of electors. If they are awake to the situation they will see to it that both the letter and the spirit of the law are observed by the political machines and that

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politicians keep their hands off the electoral machinery so far as the choice of city officers is concerned. Adequate provisions in the law or in a city charter are, of course, essential. Laws supply only the framework and it remains for the electorate to fill it in and vitalize it. The law offers an opportunity which the people may accept or neglect. It will not work automatically any more than the direct primary, or the initiative or the recall. It requires a vital affirmative assertion of the civic spirit not spasmodically expressed, but sustained and persistent, to demonstrate that this instrument of self-government is a workable force in the creation of a self-governing municipal state.

There can be no doubt that the realization that they are armed with a new weapon with which they can force the selection of public officers capable of carrying on the administration of a city for the city's good, must and does have a tonic effect on the entire electorate. There used to be frequent complaints that it was a waste of time to take part in party primaries, even in direct primaries, as the political machine would always be able to carry through its plans when it wished. So long as this discouraging spirit prevailed the situation ap-

peared hopeless. But there were communities, happily, where the voters determined to see what the new plan was worth. When it worked it served as a complete rejoinder to assertions of those lazy-minded persons who foretold that effort was not worth while. And just as throwing on the party voters the responsibility for choosing fit candidates for the party resulted in arousing a new interest in electoral methods and a consequent improvement in the character of elected officers, so does the non-partisan system of elections, in an even greater degree, arouse interest in the electors of all parties to see that their city shall enjoy real self-government and not government by a political party.

There is no reason to believe that the general adoption of non-partisan systems of election in our cities will result in the destruction of party government as so many have prophesied. It will merely limit political parties to operations in their proper fields. Just as a proper home rule constitutional provision should relieve the legislature from the burden of petty local legislation and leave it free to determine great measures of state policy, so will the application of the principle of non-partisan city elections relieve political parties of the necessity of attempting the impossible task of

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formulating a municipal policy that will bear some natural analogy to their programme for national and state government. But the new plan ought to do more than that. It ought to relieve party leaders of the trouble of wasting their time in the consideration of the innumerable petty squabbles and the troublesome problems of ward politics and personal preferment.

There were those who prophesied that the enactment of civil service laws would destroy parties. They did not, and most party leaders will declare today that they are heartily glad that the laws exist, and that they would not want to be bothered with trying to find jobs for a hundred members of their party where they only have to find a place for one today. They will even go so far as to admit that the present condition is better for the party, and results in less factional strife than in the old days when the spoils system dominated every political organization. So long as political parties nominate local tickets they must accept both the advantage and the disadvantage that comes with such action. It frequently happens that a political reaction against a party in the state will result in the defeat of a local ticket that should not have been subjected to such an adverse influence. In the same way, it sometimes

happens, as in New York and some other states, that the legislative ticket is chosen at the same time as a city ticket. A bitter fight on some purely local issue such as the erection of a garbage disposal plant or a new sewer system might result in the defeat of efficient members of the state legislature whose candidacy ought to be considered on the basis of their state legislative record alone.

There is no need to discuss here the beneficial effect of non-partisan municipal elections on city administration. The answer to that question is to be found written all through this volume from cover to cover.

In any system of non-partisan selection of public officers the relationship between the primary, where it exists, and the regular election is closer than it is under a system where party nominations are permitted. A combination of non-partisan primaries and partisan elections would be unworkable and meaningless. Partisan primaries might, indeed, be used to choose nominees for a ballot without party emblems or names, but such a hybrid form would seldom, if ever, prove satisfactory even if workable. It would be at most only a half recognition of the non-partisan principle, with little or no advantage to the political parties, and of doubtful benefit to anyone else.

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The usual form of non-partisan nominations and elections is that originally embodied in the Des Moines plan of commission government in 1907 and since then very generally adopted as an essential of almost every commission government charter. This plan, the idea of which is attributed to Senator Albert B. Cummins, then Governor of Iowa, provided for what virtually amounted to a double election. At the first election, which has come to be known as an eliminating election, any qualified elector who can obtain a certain number of signers to his petition can become a candidate. At this election the two candidates receiving the highest number of votes for each office become candidates in the second election. All other aspirants are eliminated. If there is more than one office in a group to be filled, as in choosing members of a commission, a number of candidates equal to twice the number of offices to be filled is permitted on the second ballot. This is the plan that is working with a considerable degree of success in upward of three hundred commission governed cities in the United States today, and in a number of cities that have non-partisan elections without the commission form. A deviation from this best-known type in a very important particular was incorporated in

the commission charter of Berkeley, California, and has been adopted by San Francisco, Los Angeles and several other cities and is a feature of the optional non-partisan municipal elections bill which is now being advocated in New York State. This deviation consists in a provision that any candidate receiving a majority of all the votes cast at the eliminating or primary election, shall be deemed elected, and that only those offices shall be filled at the second election, for which no candidate received a majority at the first. Otherwise, as in the Des Moines plan, the names of the two candidates receiving the highest number of votes, or in case more than one office is to be filled, twice the number appear on the second ballot.

The question of how to get names on the ballot at the first election has been a subject of considerable discussion and no little difference of opinion. The Des Moines plan required but twenty-five names to a petition. In some commission plan cities it is lower, in others higher. Some authorities have contended that there should be absolutely no restrictions, and that any qualified elector may become a candidate merely by filing a statement of his intentions. The argument for this is that when anyone may get on the ballot by saying he wants to, such

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nominations will cease to be sought as an honor, and that, therefore, only those who have a real chance will enter such a contest.*

On the other hand, most authorities hold that, notwithstanding some evidence that it has worked otherwise in England, where few restrictions are put on nominations, such a plan in this country would increase the number of nominees beyond all reason. At the first election in Des Moines, for instance, where there is some restriction, under the new plan there were over fifty candidates at the primary for the five positions to be filled. But the requirement of a large percentage of signers to nominating petitions is likewise bad in its results. Under the requirement in the proposed New York law for optional non-partisan city elections that nominations are to be signed by voters equal to ten per cent. of the number of votes cast at the last

* This is the view taken by Prof. Herman G. James in his admirable little book on "Applied City Government." He says: "The maxim holds good in politics, as elsewhere, that what is easy to get is usually not worth the going after, unless it leads to something that is worth while. When it required considerable political influence to obtain a party nomination it became worth while to struggle for it, even though the party was defeated, since the mere nomination evidenced political power. But when everyone can without any influence or power have his name appear on the official ballot, the mere appearing there is no longer an honor, and few men will appear as candidates who know there is no possibility of their being elected."

preceding election, it would have required 62,000 signatures to place a candidate for mayor of New York in nomination. This, of course, would be absurdly high, and the fact was recognized by a provision that in no city should more than 5,000 signers be required for a nomination for city office. Without such a limitation it would require the machinery and resources of an organized political party to get the required signatures. In other words, such a requirement would destroy the possibility of non-partisanship in advance by preventing a fair trial of it. A much better test was that provided for by this bill in its original form where the number of signatures required was placed at two per cent. Even this without the limitation would have meant 12,000 signatures in New York City. In a city in which 10,000 votes are cast it would mean two hundred signatures, a sufficient number to give some assurance of stability to the demand for the candidate's nomination, and yet not so large a number as to afford undue advantage to a political party organization.

There are certain obvious objections to reliance on any nominating system that is based exclusively on petitions. It is true that no other plan for placing names on the ballot in the first

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instance, is, all things considered, so satisfactory and so workable as this. Yet unless the number of signers required is so low as to constitute a "free-for-all" race with all its attendant evils, the process will always be an expensive one, and will always be open to manipulation and misuse either by political groups or combinations of interests which have even less right than political parties to engage in such operations. There is always a temptation to "pad" petitions with fictitious or unauthorized names. As a result of this feeling of dissatisfaction, there have been efforts to minimize the importance of petitions. It is one of the arguments made in favor of preferential voting over the second election system that it accomplishes this result.

In the long struggle against the dominance and interference of national political parties in local affairs there has been frequent recourse to the creation of purely city political organizations usually formed for the purpose of bringing about some particular reform or of overthrowing some particular local partisan ring. Usually these organizations have been the culmination of some "good government" movement. They have ordinarily been undertaken under the leadership of a "good govern-

ment league" or a "citizens committee" or perhaps a group formed for the purpose of effecting franchise reform or municipal ownership or obtaining a new charter. The whole history of municipal politics in America is punctuated with these municipal uprisings. It has been the belief of many men active in municipal reform that if the interest and energy brought together temporarily in these political organizations could be permanently held together in a local party organization, much might be accomplished in the direction of formulating a consistent and effective agency for the carrying out of a program of constructive municipal reform.

As a matter of fact, however, this idea, logical and attractive as it may appear at first glance, has not worked out well where attempts have been made to apply it. Frequently, this may have been due to a lack of a properly qualified and trained leadership. Often the driving power in a reform movement comes from a group of radical or idealistic leaders who have no practical experience either in politics or any other sort of organization. If the organization is entrusted to them, it is apt to be shipwrecked very shortly. Propagandists and demagogues are all too ready to try to gain the upper hand

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in such organizations for their own purposes with the inevitable result that if they succeed its original character is soon lost and it becomes an instrument of danger to the municipality. If so-called "practical politicians" gain control of it or are allowed to participate in its affairs to any extent, the organization is certain to become heir to all the evils and subject to all the limitations of any regular political party operating in a municipality.

The history of the Citizens Union in New York City, one of the most successful non-partisan organizations that ever took part in city politics, demonstrates the truth of this fact. The Citizens Union was organized from a group of good government clubs in 1897 in an attempt to wrest the control of New York's municipal government from Tammany Hall. It ran the late Seth Low for mayor in that year and he polled more votes than the Republican candidate. It was kept in existence and in 1901 it named him again as its candidate and, with the Republican endorsement, he was elected. During these years, however, the organization had attracted to itself men of many sorts not all of whom were interested in improving municipal conditions, and with its final success came the same sort of selfish scramble for office

and political preferment that takes place in regular political parties after an ordinary partisan victory. This condition continued for several years when those most interested in the welfare of the organization took steps to alter its character. The Union then ceased to nominate candidates for office and has achieved new efficiency and new life in a sphere of action that consists of watching legislation both in the city and at Albany, passing on the qualifications of candidates for office and making recommendations in regard thereto and studying and making recommendations in regard to matters of public interest and municipal policy in various lines. But aside from this the Union still continues to exert a salutary influence on local politics by frequently acting as an agency to bring into existence non-partisan movements that do result in the creation of temporary organizations for carrying on political municipal campaigns. The same thing that happened to the Citizens Union in New York has happened to other similar organizations in smaller cities the country over. As a result the movement for non-partisan action in city elections has rather been away from all forms of permanent organization activity and there have been incorporated in some charters and some state laws provisions requir-

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ing that the candidate shall swear that he represents or has received support from neither a national nor a local party organization. Whether such a strict provision is fair or helpful is open to serious question; it would seem to react in such an extreme form against co-operative work to bring about better conditions in a city and to militate against any consistent or sustained policy of reform.

It might as well be recognized that political groups, whether temporary or permanent, will continue to exist in our cities. There would seem, therefore, to be more value in provisions that will eliminate all party symbols or names on ballots for municipal officers, and enforce strict non-partisan nominations and elections. This would leave the door open to voters leagues to pass upon the qualifications of candidates and make their recommendations to the electorate accordingly. It would then remain for other organizations of a permanent nature, such as city clubs and the like, to formulate and make public their ideas on questions of municipal policy. On the basis of such recommendations and such unbiased information, it might be left to temporary citizens' movements organized for the purpose, to initiate municipal campaigns whenever it seemed advisable

for the accomplishment of definite objects.

When the machinery for non-partisan elections has been set up there still remains the problem of putting it in operation in such a way as to obtain the fullest and best results. This is where the human element comes in. Forms of government do not work automatically. The purposes of the best forms and the best laws may be nullified. Statutes may be circumvented. Politicians and demagogues have found ways to manipulate direct primaries; they can find ways to obtain control of municipal commissions; they can misuse the initiative and the recall. Likewise, they can nullify the good results that should be obtained from any system of non-partisan elections. "The prospect of saving municipal government from the disturbances of national politics is remote if reliance upon changes in the form of election machinery is the basis of our dreams," wrote Prof. C. C. Arbuthnot, of Western Reserve University, in a review of Mayor Newton D. Baker's administration in Cleveland. His remedy is cooperation between the majority group and the minority group in the work of solving a city's problems. "The policy of isolating the group (the minority) in comparative ineffectiveness," he wrote, "draws the partisan line

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sharper, turns energy that should be constructive into obstructive tactics, sours the milk of common interest and sacrifices matters of local concern to an overemphasized national distinction. The cities will never begin to free themselves from this incubus unless they commence in substance as well as form.”*

This “substance,” of which Prof. Arbuthnot speaks, is the municipal spirit of cooperative endeavor for the good of the city without which any permanent progress in municipal government is impossible. Our hopes for the solution of the problems of city government in America must eventually be realized through the active operation of this spirit if at all. We know that this spirit is aroused and that it is daily growing stronger. This is the force back of the movement for short ballot commission charters; it is the force that is rapidly placing municipal elections on a non-partisan basis, and it is the force that will in the end bring about the emancipation of our cities. If it continues to grow as it has been growing within recent years, it will vitalize forms and statutes with effectiveness and make municipal home rule an accomplished fact.

* See Prof. Arbuthnot's article in "National Municipal Review," April, 1916.

CHAPTER VII

MAKING THE BALLOT EFFECTIVE

BACK of the demand for the direct primary there lay the conviction that the voter was placed at a disadvantage and that the effectiveness of his vote was lessened because he had no part in picking the candidates of his party and because he was allowed only the privilege of passing on the choice of two or more bosses or partisan political machines. Back of the demand for non-partisan municipal elections there is likewise the feeling that, so far as the solution of municipal problems is concerned, votes can not be truly effective that are cast for the candidates of a partisan political machine whether chosen by direct primary or otherwise, so long as those candidates are selected not primarily because of fitness to carry on the administration of the city, but because they are the approved representatives of a political party whose only interest in municipal affairs is at best a selfish partisan one.

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When this point has been reached the question still remains to be considered whether non-partisan primaries and elections alone can give sufficient assurance that every ballot cast will most effectively indicate the intention and desire of the voter. It is the widespread and growing conviction that there is something more than mere non-partisanship needed, if the vote is in the fullest and most effective manner to express the will of the voter, that has led to the movements in this country to introduce either the preferential ballot or a plan of proportional representation into our municipal electoral system.

The preferential system of voting is based on the use of a ballot which allows the voter to mark his preferences in such a way that if the candidate for whom he indicates his first preference cannot obtain a majority of the votes cast, his vote will not be lost, but will be counted for the man for whom he has expressed a second preference, and so on. The effectiveness of the vote, therefore, is not dependent on the first preference indicated, but extends to the second or third and possibly even to other choices.

Preferential voting has already attained a strong hold in American cities and is in suc-

cessful operation today in more than a score of cities. Beginning with its adoption, for the first time in this country, as a part of the new charter of the City of Grand Junction, Colorado, in 1909, the new plan was extended to Spokane in the year following and later to Pueblo, Colorado Springs, Denver, Duluth, Portland, Oregon, and Cleveland, Ohio. At the same time preferential voting provisions were introduced in slightly varying forms in the state primary laws of Washington, North Dakota, Idaho, Wisconsin and Minnesota.*

In 1914 the commission governed cities of New Jersey were granted by state law the privilege of adopting the preferential plan for their municipal elections.

The ballot used under the preferential system is simple and easy to vote. It is ordinarily of the Massachusetts or office group type, but, as used in Grand Junction and as generally adapted elsewhere in this country, it has three columns for cross marks opposite the names of

* The Minnesota Law has been held unconstitutional by the state supreme court, which held that the preferential plan introduced an element of inequality into the constitutional right of equal suffrage. "The preferential system," said the court, "greatly diminishes the right of an elector to give an effective vote for the candidate of his choice"—thus strangely enough making the very point against the law that is usually put forward as one of the strongest arguments in its favor.

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the candidates instead of a single voting space. The voter indicates his first choice by a cross mark in the first column and, if he wishes, may express his second choice by a vote in the second column. Other preferences, if any, are indicated in the third column. In some cases more than three choices are allowed, but it is felt by many advocates of the system that the indication of more than three preferences serves to becloud the result and to weaken the principle of the system. As a result of this feeling some charters strictly limit the voter to a single vote for each candidate in the third column.

The method of counting the vote is rather more difficult and it is here that the operation of the preferential principle becomes evident. If when the votes are counted for first choice it is found that any one candidate has obtained a majority of the first choice preferences, which adding up the cross-marks in the first column will indicate, he is declared elected. If the count of the first column votes does not show a majority for any one of the candidates, the second choice votes for each candidate are counted and are added to his first choice totals. Again the totals are compared to ascertain whether any candidate has received a majority on first and second choice votes. If he has he is elected.

If there is still no majority the election officers proceed to count up the indicated preferences in the third column. After all preferences are counted the highest candidate is declared elected even if he has not an actual majority. In practice it has been found that a majority is usually obtained at least by the count of the third column choices. A variation from this method found in some plans provides for the dropping of the low man after each column is counted and the distribution of his votes among the other candidates. The objection to this method is that it may put a candidate out of the running before he has had an opportunity to profit by his second or third choices.

The chief value of this system, according to its advocates, is that if any candidate is approved by a majority of the voters—not necessarily as the first choice but in preference to all other candidates—it will be indicated in the vote. In other words, as a majority vote is a surer indication of the preference of an electorate than a minority vote, any system that assures a more frequent registering of a majority vote is a more effective method of voting than one which cannot be depended on for such a result. To this extent, as its advocates contend, the preferential plan is a more accurate

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measure of the popular will than the ordinary single choice or common plurality system. It clearly does not in all cases assure a majority choice, but, so it is argued, no other plan so accurately expresses the actual will of the greatest number of voters or is likely to go so far toward the much desired result of preventing an organized minority from defeating the will of an unorganized majority.

The preferential plan as proved in its practical application is not a difficult one to introduce or to explain to the electorate. The rules of the count are ordinarily simple. It does not entail any radical change in our existing electoral machinery and it can be put in operation with little or no difficulty, especially in cities where municipal elections are held separately, as they should be. It does away entirely with the necessity of primaries of any sort and thus assures the saving of much money and effort that is wasted in primary elections or in double elections under the system of eliminating elections described in the last chapter. In particular is it fitted to be the instrument of putting into operation an effective system of non-partisan elections. There are or should be no names or emblems on the ballot to indicate to what party a candidate belongs or whether he has

the support of any group or organization. It is as easily adjustable for use in electing single officers as it is for choosing several candidates from the same district or from the city at large. There is nothing, of course, to prevent political parties, if they will, endorsing candidates whose names appear on the ballot and urging their election. But the advantage from the party point of view of such action, in any event extremely doubtful, is rendered almost negligible by the addition of the opportunity of registering second and third preferences. A plan that has so many attractive features from the point of view of non-partisanship in municipal politics to start with, and that will certainly be perfected in many respects as developed in practice, is especially worthy of consideration by those who are seeking to apply methods or create agencies that will give cities the most effective control of their own affairs.

It is evident that the preferential plan of voting could not be made to work with satisfaction where the system of party nominations and elections is still in use. Where an elector is voting for a party candidate, the influence of partisanship is likely to influence his personal choice to such an extent that he will be extremely unwilling to express a second choice

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even if he has one, in such a way as to affect the result of the election adversely to his party. But once a non-partisan system of elections is adopted, the argument for a preferential system becomes stronger. Its applicability to municipal elections, therefore, and its value as an instrument of municipal home rule, become clear.

It is contended by the advocates of preferential voting that it not only more accurately gauges the real popular will in the choice of elective public officials, but that it also provides an electorate with a weapon to strike with greater certainty and effectiveness at party bosses and partisan machines. These factors in themselves would naturally arouse support for the plan from those who are struggling to bring about the emancipation of the cities from the incubus of party politics. If it is agreed that adequate municipal home rule involves among other things the completest possible control of the electorate over its elected representatives in the government of the city, and the utmost responsiveness on their part to the will of the electorate, then preferential voting must be considered an important agency of municipal home rule.

With the adoption of provisions for propor-

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tional representation in the selection of members of the city council of Ashtabula, Ohio, in 1915, the first step toward making a practical test of this system in the United States was made. The first election held under these provisions took place on November 2d of that year, and that date is looked upon by advocates of proportional representation as a red letter day in the history of their movement. If this system could be made to work as satisfactorily everywhere as it apparently worked in Ashtabula at its first trial, and if the standard of election officers could be elevated sufficiently to overcome the obvious difficulties of the count, then a system which, it is contended, affords the greatest possible freedom to the elector in expressing his choice, and at the same time assures the fullest measure of effectiveness in that choice, must be considered, within certain limitations, as an agency of tremendous importance in bringing about municipal reform and rendering municipal home rule effective.

The limitation referred to is that proportional representation can be made to work only where there is more than one office of the same sort to be filled at the same time as in the election of members of a municipal commission, and that it is most effective when five or more council-

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men are to be chosen at once. It is not argued that the proportional system can be made to apply to the choice of single executive or administrative officers. Only in cases where deliberative representative assemblies or councils are to be chosen can the system under existing conditions be satisfactorily applied in workable form to our municipal elections. Furthermore, the system will not apply to the election of councilmen in cities where the old ward or district plan of representation has been retained unless the wards have as many as five representatives each. Its advocates argue particularly for its adoption in cities which have the commission manager type of government, acknowledging that it is not theoretically so well fitted for the choice of a commission, the members of which exercise administrative or executive powers. For those cities that have city governing bodies chosen at large, the adoption of a system of proportional representation will be indicated chiefly by an alteration in the method of voting and counting the vote. It is much more likely, therefore, to receive serious consideration in such cities than it will for some time to come be considered for the choice of members of a state legislature or for Congress, where radical constitutional changes would be

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necessary and the entire representative plan of our state and national governments would of necessity have to be reconstructed.*

The ballot used in electing representatives on a proportional, or, as it has also been called, a "unanimous constituency," basis is similar in most cases to the preferential ballot for members of a city council already described. The names may be placed on the ballot in the same way. The difference comes primarily in the count. The Ashtabula plan is based on the well known Hare System, which is in use also in Tasmania, the Union of South Africa and Denmark. Under the Hare System the candidates are nominated by petition. In voting the elector marks the figures 1, 2, 3 and so on after the names according to his preference. The ballots are counted first in the precincts according to first choices. They are then sent to the central board of elections, where the first choice ballots

* The Committee on Municipal Program of the National Municipal League, in reporting the final draft of its model city charter on the commission manager plan (March, 1916), suggested as an alternative but did not recommend the adoption of proportional representation for members of the city commission chosen at large in cities under one hundred thousand in population. This suggestion was made, it was said, to overcome the disadvantage due to the fact that elections at large do not insure minority representation and might leave a city government wholly without the corrective benefit of a vigilant opposition.

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are counted for each candidate and then the totals of second and third choices and so on. Instead of a majority of votes being required to assure election, each candidate, under the Hare System, must obtain a number equal to the quotient of the whole number of votes cast divided by the number of places to be filled in a given unit of representation. If any candidate is found on the count to have more than enough votes to elect him, then his surplus votes are distributed among other candidates according to the indicated preference on the ballots.*

Another system of proportional representation is that known as the List System, which in slightly dissimilar forms is in use in Belgium, Switzerland and some other countries of Continental Europe and in Japan. The List System is simpler to count and, if anything, simpler to vote, although there is not possible under it so complete an expression of individual preferences as there is under the Hare System. The names are placed on the ballot by petition in lists. There may be in each list as many names as there are seats to be filled from that particular representative district. Ordinarily it is presumed that the names on each list are those of candidates who believe the same way in re-

* For method of counting vote, see Appendix F.

gard to political problems, and to that extent they definitely stand forth as the candidates of a particular group in the electorate. But no party designations or emblems are allowed. The ballot is voted by the elector making a cross mark opposite one name on one list. This single vote has a double meaning; it indicates an individual preference for the name of the candidate voted for, thus increasing his personal total, and also goes to determine what proportion of the whole number of candidates elected are to be chosen from this same list.

How far proportional representation can be made to work with success in American cities is problematical. It is not at all difficult to teach a voter how to vote such a ballot. The difficulty lies in making it perfectly clear to him what his vote is going to count for after the counting process is concluded. The argument for proportional representation is that it makes every vote "effective." But under the most favorable circumstances there is a very considerable vote, in our cities especially, that must be called unintelligent. If any new method introduces an element of uncertainty in the minds of voters as to just what they are accomplishing by their votes so that the unintelligent minority does not register its vote correctly, or possibly is de-

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tered from voting at all, the effectiveness of the result is so much lessened. As one doubter expressed it, after the plan had been explained to him, "I prefer to shoot at a target that I can see. If I make a bull's-eye, I know it, and if I hit outside the ring I know that too—but I always know where my bullet goes, even if it doesn't count." This may seem illogical from the point of view of the advocate of proportional representation, but it was nevertheless not the opinion of an unintelligent voter, but of an intelligent business man. Advocates of proportional representation will answer all questions as to the ease with which the ballot is voted and counted by pointing to the way it works where the system is in operation—and presumably they mean the ease with which the ballot is voted intelligently, not merely the ease with which the *apparent* intention of the voter is disclosed thereon. Yet at a time when we are seeking to simplify the process of voting as much as possible and focussing the attention of the voter on a clearly defined result, this apparent defect or indefiniteness in the system and the possible effect it may have on the vote, must be taken into account.

There is also to be taken seriously into account the difficulty or complexity of the count,

in which many find their chief objection to the system. The choice of highly intelligent election officers selected after examination on a merit basis would tend to eliminate this objection to a considerable extent. But with the present low order of intelligence of the average election officer chosen on a partisan or bi-partisan plan from lists of party workers who have to be "taken care of," it might prove a very serious matter to depend on their calculation of the result of a vote cast under either one of these proportional systems.*

Furthermore, proportional representation works best when there are five or more members to be chosen at once from a single constituency. This, it would seem, takes us in a directly opposite direction from that in which the short ballot reform has been carrying us. Thus in the application of the short ballot to commission governed cities, whether under the regular commission plan or the commission manager plan, the tendency has been to have, as far as possible, only one or two commissioners chosen each year. Proportional representation would

* Advocates of the plan meet this criticism by pointing out that only the preliminary count is made by district election boards and that the more difficult work of computing the result must be done by a central board with the returns from the whole constituency in its hands. It is only here, so it is maintained, that experts would be required.

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not work effectively unless three or preferably five were chosen at one and the same time.

It is an open question, too, whether proportional representation will not in the long run rather play into the hands of local political parties or machines, rather than eliminate or minimize their control and influence. Certainly the List System and to a lesser extent, perhaps, the Hare System, tend to emphasize the importance of groups of men who think alike, or who are convinced that their interests are similar, working together to accomplish a definite result in government. Indeed this is held to be one of the strong arguments for proportional representation. Ballots are cast for an idea rather than for an individual. How long will the advocates of an idea, or set of ideas, fail to see, or refrain from using, the advantage that comes with something closely resembling party organization? To this extent it appears to minimize the emphasis on the individual qualifications of candidates which is considered so important an essential to real non-partisanship in municipal elections.*

* It is obvious that there is a serious objection to the application of the recall to individual officers chosen under a system of proportional representation. The theory of such a choice is that members thus elected do not represent the whole electorate, but merely a minority group or quota. The recall of a single member, or of any number less than the

But a system that works well in so many parts of the globe must have some strong arguments in its favor and certainly should not be lightly passed over in this country, where we are beginning to appreciate more and more in these latter years the value of the best experience of the rest of the world. Our two-party system would doubtless serve as a check to its general use in this country, particularly in large political units, until some sort of a political revolution takes place. But even if official party action is eliminated from our cities we must still recognize the fact that it is both natural and advisable that men continue to act together in concert to bring about the adoption of certain policies and in the choice of representatives who will carry them out. Therefore, assuming that we are to dispense with parties altogether in our municipal elections, it may fairly be asked, is not a system that will facilitate the working together of groups of men who think the same way in regard to municipal problems,

entire council, would therefore be destructive to this principle. The recall provisions under such circumstances could only be logically applied to the whole council at once. In this way individual councilmen who could not retain the support of the necessary quota might be eliminated. Proportional representation advocates, however, argue that once the principle of their plan is thoroughly understood, and accepted in spirit as well as in fact there will be very little necessity or demand for the application of the recall.

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perhaps a safer step than the adoption of some plan in which the natural tendency toward grouping together of electors would be not only disregarded, but would be rendered difficult? The advocates of proportional representation frankly contend that it would and urge its adoption for our cities on that ground.

It seems clear that every city should have the power to decide for itself the method it wishes to use in choosing its municipal officers. Such a right ought to be a fundamental of municipal home rule, for the city electorate is the main-spring of municipal powers. This does not mean that a city should not be compelled to conform to the state election laws when it comes to the choice of other than municipal officers. In like manner all provisions of the state law applying to elections, the corrupt practices act, qualifications for voting, and provisions safeguarding the honesty and purity of elections should remain in force. But there is no reason why, with these exceptions and within these limitations, a city should not be free to adopt and put into operation any form of non-partisan primaries and elections, preferential ballots or a system of proportional representation. And this freedom of choice should be

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accorded to every city in the land, not by special grant, but by the constitution and general laws of the state as a fair and just measure of home rule.

CHAPTER VIII

INITIATIVE, REFERENDUM AND RECALL

Few proposed changes in our system of government put forth during the past few years have been defended on the one hand and opposed on the other with more violence and acrimony than the three devices known as the initiative, referendum and the recall. It is because they contemplate frankly not a mere change in the form of government but a striking modification in one of the underlying principles on which our government is based, that they have become the storm centre of the progressive movement in government. The advocates of these reforms believe that in them lies the necessary corrective or cure for the ills which have developed in our representative system. In their behalf it is urged that through them a greater measure of responsiveness to the demands of the people is likely to be obtained and the popular will is more directly and correctly ascertained. Against them it is

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urged that their acceptance means an ultimate recourse to direct legislation and with it the eventual undermining of the established system of representative government. Advocacy of them is made by many liberals a test of a public man's liberality or progressiveness. By conservatives the man who advocates them is apt to be set down as an impractical idealist or a dangerous radical. Neither of these views is the true one.

Referendums on franchises, bond issues and constitutional amendments are common enough and no one considers them especially dangerous. Therefore, when a man attacks the referendum today he must specify what sort of a referendum he means. Usually he will admit—especially if he couples it with a reference to the initiative or the recall—that he means a referendum on legislation. There are many radicals today who do not insist on the uncompromising acceptance of all three of these devices as part of an orthodox civic creed. So also there are many fairly conservative individuals who have come to look upon them without great fear and trembling. All three do not necessarily stand or fall together. Many cities have incorporated provisions for one or two of them in their charters and rejected the third.

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One of the arguments made against them, indeed, in the states and cities where they have been tried is that they are neither effective nor dangerous, but are merely bothersome clap-trap.

Nevertheless, the man who denies that any serious deficiencies have developed in our representative system of government can usually be counted on to oppose these "innovations" with all his might and main. But the men who take such a standpat attitude as that are daily growing fewer. Most men familiar with the actual workings of our government, whether they be practical politicians or theorists, are ready to acknowledge that there are in practice certain very obvious defects in our representative system. The most patent difficulty is that the so-called representative so very frequently does not represent his constituency. There is small wonder in that, for he has too often been chosen originally without the least regard for or consideration of the wishes of his constituents. He may represent a boss or a political machine. He may represent an "interest" or group of "interests," either capitalistic or labor. But he does not really represent the views of those who elected him. Under such circumstances the demand for a radical

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change seems natural and reasonable. Some improvement came with the wide adoption of the direct primary. That solved the difficulty in part, but in part only.

The initiative, referendum and recall are all devised with the idea of completing the reformation. But instead of broadening the basis of representation and making it possible, or at least easier, to get representatives who will really represent, these proposals suggest an entirely new line of approach to the solution of the problem. They seek to limit the scope of his representative capacity—the recall by holding over his official head a sword that threatens to cut short his political life at any time that a certain varying percentage of his constituents think they would rather have someone else in his office; the initiative and referendum by conferring on his constituents in various forms and degrees a sort of concurrent power of legislation, including the power of veto, and the authority to ignore him entirely by initiating legislation directly. Those who oppose these proposals complain that all this seriously threatens a public officer's effectiveness as an executive or as a law-maker, that it even tempts him to be careless about his legislative or executive duties, and to shirk his responsibilities.

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They argue that unless he is a fearless person, a public officer's acts under such conditions are more apt to be inspired by a fear of consequences than by a high sense of obligation to determine every matter that he is compelled to decide on a basis of reason and judgment as to whether or not it is for the best interests, not of his own constituency alone, but of the state or city which he has been elected to serve. To all of which the advocates of the initiative, referendum and recall reply that only the weak man who should never have been chosen to a position of responsibility or authority in the first place, will be affected or handicapped in the manner complained of, and that so far as its affecting his character as a representative is concerned, that is wholly uncertain and unsatisfactory under present conditions. They are trying to improve conditions by empowering his constituents to assume the authority delegated to him, which he fails to exercise.

It is important in considering the arguments for and against these proposals for getting more direct results in government, to bear in mind that there is little difference of opinion as to what the extensive exercise of powers under such proposals, if written into the law, would mean. Here their possible application

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to a limited field—that of municipal government, and their contribution to a solution of the home rule problem—are alone to be considered. With the application of these remedies to the elective state officers, whether they be executive or judicial, we shall not concern ourselves.

There are many people who disbelieve in the recall in its general application who are not particularly opposed to its use in cities. In cities many of the objections that are raised to its use in connection with legislators or state officers or judges disappear. It is in the first place, more easy to put into operation in cities than it is in larger political divisions. It is usually much simpler to present clearly and satisfactorily the issues involved in connection with the test of a municipal officer's fitness in a city. The newspapers and the greater accessibility of public meetings contribute to that result. Geographical and even political considerations are apt to play a much less important part in the result. The administrative machinery will be put to the minimum of strain, by reason of a change or the attempt to bring about a change. Moreover, the personality or the character and fitness of a candidate, particularly in medium sized cities, can be more correctly weighed, and the reasons for his official

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acts more fairly judged than would be possible in the case of a man elected to a state office.

Partisan political reasons, all believers in the recall hold, should seldom, if ever, be made the basis for a recall. Such reasons are less potent in cities today than in any other political divisions. The real test of a public official should be his acts as an executive or a legislative officer.

The recall cannot properly be applied, and should not be applied, to an official who is not fully responsible for his acts. The essential idea behind the recall is the attempt to enforce responsibility. Again if a city does not possess a considerable measure of home rule, it must necessarily limit the scope of the recall, for a public official naturally should not be held responsible for things he is compelled to do by an outside authority, or for failure to accomplish things which he has not the authority to do. For these same reasons also the recall can be applied more properly and more justly in a short ballot city, such as those under commission government, where the responsibility is easily fixed and public attention is more clearly focussed on a public official. It is for these reasons that many men who hesitate to apply the recall generally are willing to agree that in the

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case of a municipality possessing a large degree of home rule and choosing its officers on a short ballot, the recall may be both helpful and efficacious in keeping up a high standard of efficiency and forcing home the principle of responsibility.

There are several considerations in connection with the recall, if it is to be used, which should be emphasized, however. The first of these is that it must evidently be surrounded by proper safeguards to prevent its misuse or abuse. It should never be possible to apply the recall so easily that a defeated minority could take advantage of it to force a second election. The presentation of a recall petition does not have to be based on proved charges. Hence, it clearly should not be so easy to invoke that a small group with a grievance, or under the sting of defeat, can force a second election on trumped-up or baseless charges.

In practice, it has been found that even where the restrictions against the recall are slight, it is very infrequently invoked for merely partisan reasons. Any man in public office, however, is apt to arouse a certain degree of adverse criticism no matter how able or high-minded he may be. It is impossible to suit everyone. In every community there will be

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found habitual fault-finders who are always looking for things to criticize in any public official; and the newspapers are only too willing to give publicity to such criticism. It is usually more difficult to arouse an electorate, even one inclined to be friendly, to defend a man after he is in office than it was to bring about his election in the first place. A political campaign means the active, aggressive support of a candidate who is seeking office. The support of a public official already in office is likely to be much more passive and matter-of-fact in its nature. It is harder to arouse men to prevent a man's being ousted from office than it is to put him into office originally. The recall is an emergency weapon. It should be possible to use it, therefore, only in cases of emergency. This means that the proportion of signers to a recall provision should be large enough to make it evident that there is a proper demand behind the movement for a change. The proportion of the voters required to sign a recall petition should be based on the vote originally cast in the political division at the time of the public official's election. A conservative judgment as to the number that should be required, would place it somewhere between twenty-five and thirty-five per cent. of the vote cast at the origi-

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nal election.* With such a percentage required before the recall can be invoked, it is unlikely that it would ever be misused. On the other hand, it would be perfectly easy in case of real emergency, when alone can the recall be properly applied, to obtain the necessary signatures for its submission.

Another point must be considered. It should never be possible to invoke the recall until after the official who may be subject to it, has had a fair opportunity to prove his worth in office. Therefore, it would seem advisable that an officer should have been in office at least a year before he may be recalled. In the case of long term officers, it has frequently been suggested that they be subject to the recall mid-way in their terms, if there is reason for it. This plan is in force in Boston. Some local officers are chosen for only a year. It isn't worth the time or trouble to apply the recall to them.

As has been suggested, the recall is likely to work most satisfactorily in commission-governed cities for there circumstances permit a squarer joining of issues and a greater concen-

* Some required percentages are much lower than this. The fact that the recall has not been misused has apparently persuaded many that a low percentage requirement is perfectly safe. The model charter of the National Municipal League, for instance, places it at only fifteen per cent. The Des Moines charter provisions require twenty-five per cent.

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tration of interest on the contest. In these cities, too, the general acceptance of the non-partisan ballot tends to free the issue from partisanship which might otherwise confuse it. Moreover, the long terms of most municipal commissioners offer a reasonable justification for its application. Here also the application should be made only to the officers exercising executive or legislative authority. There can be no argument for applying the recall to purely administrative officers, who should never be elected anyhow. The recall cannot logically be applied to an appointive officer, and this would include city managers.* There are good reasons, too, why the recall should not be applied to judicial officers and as that question is not essentially a municipal one, even in the case of municipal judges, it will not be discussed here.

Finally, it should be pointed out that radical as the recall provision is, and great as the fear is in conservative minds that its general adoption would prove disastrous, it is not likely to be misused or overused to any extent in this country.† There seems to be an inherent belief in the American people that efficient govern-

* The Dayton charter. See chapter "The City Manager."

† The recall is in operation in upward of three hundred cities; only about ten per cent. have ever used it.

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ment requires a large degree of stability. That is the reason why of late we have been gradually lengthening the terms of office of our elective officials. In practice it has been proved that there is very infrequent recourse to the recall where it is written into the statute books or into city charters. A large proportion of the cities now under the commission form of government have recall provisions in their charters. Many cities not under the commission form of government have the recall. The number of instances, however, where it has been used is remarkably small. From this we may conclude that the recall is more efficacious as a preventive than as a punitive measure.

The initiative and the referendum constitute frankly a divergence from the representative form of government. That probably is the most plausible, if not the most forcible argument that can be brought against their general adoption. To many it will be all the argument that is needed. They are the instruments of direct legislation. They would apply the old practice of the New England town meeting, regulated and limited by the restrictions of our modern elections laws, to all sorts of political divisions from wards or school districts up to states. Just as the old New England town meeting

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provided a perfectly adequate and responsible form of government for small New England communities, so the initiative and the referendum are more easily and naturally adjusted to municipalities than to political divisions covering larger geographical areas.

With the principle involved in the referendum, we have, of course, become quite familiar in America through actual experience. It has been the prevailing custom to use the referendum in connection with the submission of a new state constitution or with amendments to such a constitution. The reasoning which made this practice general was natural. The constitution, with its grant of powers to executive and legislatures, and courts, came from the people. It was their creation. For practical purposes they delegated their authority to groups of representatives chosen to frame this instrument of government. It was natural and logical that the matter should be referred back to them for approval; for the same reason constitutional amendments have generally been referred. This practice has been so generally accepted that we scarcely think of it as involving in any way the principle of the referendum. There are other respects in which the referendum has been quite commonly used. One of these is in

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connection with large bond issues. Another use of the referendum, which has become familiar, is in connection with the grant of franchises. Still another is the submission of local option propositions in regard to liquor traffic.

None of these forms of the referendum, however, it will be readily seen upon analysis, results in an abdication in any essential of the representative principle of government. We are dealing here with the referendum in its application to municipalities. Like the recall it would appear to be more readily applicable to municipalities than to larger areas. The idea of submitting the constitution of a city, which we are accustomed to call its charter, to the people, does not cause any shock to the conservative sensibilities of those who balk at the use of the referendum; nor are we apt to feel that the exercise of an electorate's right of veto or approval in matters involving bond issues and franchises, is at all obnoxious to the representative idea. In both these latter propositions the issue involved is so great and the decision once made so final that it cannot be considered in the light of ordinary legislation, which might be repealed by a succeeding legislative body. The electorate in acting directly on these matters is acting not for itself alone,

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not on a matter which involves its own common pocketbook, but often on a matter which loads a burden of debt on the community which must be paid by its children and grandchildren. This is a legitimate and logical application of the idea of direct action in which few find any attack on the representative principles. The legislative referendum is a different matter. It must be remembered, however, that both the initiative and the referendum differ from the recall in being purely legislative remedies.

The legislative referendum as usually applied to city ordinances is a sort of suspensive veto or approval exercised directly by the voters on the acts of their representatives. The law-making body passes an ordinance. The action is published and if, after a definite period no objection is offered it goes into effect. If, however, within that period a petition is presented signed by a certain number of voters, the measure does not become effective but must be submitted to a popular vote. An adverse vote is equivalent to a veto; if the vote is favorable the law goes into effect immediately. There are variations in this procedure. One in quite general use authorizes the local legislature of its own accord to submit laws to the

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vote of the electors without attempting to act on them finally itself. This procedure has been criticized as affording the legislator an opportunity to shift the responsibility—to “pass the buck,” to the electors instead of doing what he was elected to do. It is defended as a proper and salutary method of appealing to the people in cases involving matters in which they are greatly interested. In any form the referendum petition constitutes either a check on the representative or a limitation of his representative authority. It may be looked upon either as an expression of distrust in the capacity of the representative to represent those who elected him, or as an expression of faith in the inherent ability of the electors as a whole to do their own law-making. It all depends on the point of view. Like the recall the referendum partakes of the character of an emergency device to be used only when a considerable portion of the electorate is dissatisfied with what their representatives have done. Like the recall, too, there should always be a requirement of a substantial number of signers before it can be invoked.* Furthermore, there should always be an addi-

* The percentages are usually somewhat less than those required in recall elections. They generally differ according to the particular method employed. The same holds true of the initiative.

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tional safeguard providing that whenever the necessity for immediate action is more pressing than the emergency that demands a referendum, the first will determine the matter and take precedence over it.

The initiative approximates pure direct legislation more nearly than the referendum. It does not deal with the things which duly elected representatives have not done, or which they prefer to have the electorate decide, but with things they have failed to do, and possibly have never been asked to do. When a certain number of electors believe that some particular measure ought to be passed they "initiate" it. Sometimes this is accomplished by a petition to the law-making body asking them to pass the measure in question. If the law-making body passes it well and good. There is no need of a popular vote on it. If, however, it fails to approve it within a given time the proposal is referred to the people, and the final decision is left in their hands as in the case of the referendum. An even more direct method provides for the direct submission of a measure to the voters without a prior submission to the law-making body. In either case, however, the proposal "comes from the people" who thus take upon themselves a duty commonly undertaken

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only by the legislative branch of the government. The initiative is also an emergency measure, and the requirements as to the number of petitioners should be fully as large as that required for the referendum. In practice it has proved acceptable and effective in several cities, and has seldom been used so extensively as to arouse any considerable opposition.*

There is one argument against the wide use of the initiative that has a great deal of weight. It has to do with the method of drafting the proposals for laws that are to be submitted to a popular vote. One of the most serious difficulties with our legislation today is that half of it is poorly drafted and frequently does not really accomplish the results aimed at. This evident defect has resulted within the past few years in the establishment of bill drafting departments in many states and even in some cities. The free use of the initiative would tend to destroy all that has been accomplished in this direction unless it were accompanied by some provision that the laws so submitted should first pass under the scrutiny as to detail and phraseology of bill-drafting experts.

But such a restriction is opposed by advocates of direct legislation, who take the ground

* Experience of Portland.

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that in the free use of the initiative it is essential that the measure should be presented in exactly the form that its proponents wish and that the freedom of presenting any sort of a proposal must not be interfered with or limited. A poorly drafted proposal, if attacked on the ground that it was faultily drafted, might, indeed, be defeated for that very reason. There are several instances on record where laws proposed in this manner have been successfully attacked on such grounds. Nevertheless, the danger remains. It frequently happens that dangerous and ill-considered propositions have been put forward by propagandists, some sincere, others demagogic. These might in a time of public excitement be accepted by an unreasoning electorate if presented to the voters as initiative proposals. This would not mean that the people could not be trusted; it would mean merely that they had acted without proper consideration or under the impulse of public agitation. But the evil would be done and it might be impossible to undo it.

Another danger or rather weakness in the initiative lies in the fact that proposals that appeal to the voters' generosity or spirit of humanity are apt to receive support out of all proportion to their real merits. To a certain

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extent, of course, boards of aldermen and state legislatures show the same weakness in dealing with special claim and pension bills especially where the human element enters largely. But legislators—in spite of some striking examples that appear to prove the contrary—do feel a responsibility for their acts that an electorate has not been educated to feel.

In conclusion, it may again be emphasized that it is a serious mistake to look upon the initiative, referendum and recall as cure-alls. That error was made by many over-enthusiastic advocates of the direct primary. The clearer-headed advocates of that reform had no such misconception of its effect and in operation it has probably fulfilled their expectations. To them it meant a check and an opportunity—a check on boss-made nominations—an opportunity which the members of a party might avail themselves of when it seemed likely that their wishes were to be ignored in the choice of party candidates. It was not to be used primarily to destroy party organizations, or even bosses. It was a weapon to be placed in the hands of the electors to make party organizations and party leaders more responsive. In seven cases out of ten it might not be necessary to use it; in the other three cases there might be vital issues at

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stake that made the opportunity a real one.

So with the initiative, referendum and recall. They may be looked upon as the weapons of an adequate civic preparedness. They may not have to be used often—indeed, they may become dulled or broken if they are used too frequently. But it is the judgment of a great many people that they ought to be kept in the civic armory, where under proper regulations that will put them out of reach of mere malcontents or hot-heads, they will be available for use whenever a real necessity arises. An emergency may not occur more than once in a generation, but when it does come it is just as well to be prepared for it.

CHAPTER IX

ADMINISTRATION AND CIVIL SERVICE

THE movement toward better municipal government has consisted largely of progress along two lines; first, in those changes comprehended in efforts to make the executive and legislative branches of a city government more responsible and more responsive, and secondly, in a reconstruction of the administrative machinery of the city to render it more effective in carrying out the policies approved by the voters at the polls, and in providing a permanent trained body of city employees who do their work irrespective of the changes in the political complexion of the heads of the city government. It is to the second line of development that this chapter is devoted.

Had those who imposed on our American cities in the early days of the last century the doctrine of a separation of powers, paid less attention to the application of that theory, and given more attention to another sort of separa-

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tion, namely, the separation of the policy determining and the policy-carrying-out functions of a municipal government, the whole history of the development of American cities might have been different.

Why this view of the matter was not taken is, however, not difficult to see. To begin with, it was not until along toward the middle of the last century that men began to realize that there was any such thing as a municipal problem. It could scarcely have been otherwise in a nation in which urban life had not become a factor of any real importance. Furthermore, so long as men were accustomed to look on both government and its administration as purely political matters, there was little likelihood that any distinction between the two would be discovered, even had the administrative functions of government in those days been important enough to attract attention. But when we remember that there were practically no municipal administrative functions of the sort we are familiar with even in small cities today, we need seek no further explanation. When there were few apparent differences in the underlying principles of local, state and national governments, even statesmen may be excused for not finding them.

The multiplicity of new problems of govern-

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ment that come with the growth of cities, forced on those who concerned themselves with such matters, both governors and governed, the conviction that the municipal problem was neither essentially nor predominantly political in character. Men began to see that while questions of policy might justly be considered from a political viewpoint, the carrying out of those policies, once they had been determined, was purely a problem of efficient administration to be properly considered in the same light as the carrying out of any other problem in business administration. As nine-tenths of the work of running a city is clearly administrative, it follows that politics has, or should have, a comparatively small part in municipal affairs.

Were it not for the habitual interference of national political parties in the affairs of cities, and their insistence that their continued existence requires them to remain intrenched there, the solution of this phase of the municipal problem would be simple. Even under the existing unfavorable conditions, the experience of the last few years gives strong hope that it will be solved in another decade or so. Toward this solution the demand for administrative efficiency is pushing forward with even more force than the self-interest of politicians and office

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holders in pulling backward. This demand is based on the vital need of improved methods to cope successfully with the puzzling and diverse problems of Twentieth Century municipal life and government. There have been complaints that "this efficiency business" was being overdone, that efficiency was a fetich, and that "efficiency" and "system" were mere catch words borrowed from the business world to provide an opportunity for the extension of government agencies, which can be administered only by specially trained experts. Those who take this view are fond of telling how much better off we would be today if we had more "humanity" and less "efficiency" in our government. The trouble with their plaint, aside from its obvious origin, is that evidence is accumulating every day to prove that efficiency and what they call "humanity" go hand in hand. This evidence shows that efficient administration can be reckoned not only in dollars and cents, not only in better government, but in better homes and better health. It means not only progress and opportunity, it means a dollar's worth of service for every dollar a working man pays either in taxes or in rentals. It means vastly improved conditions of urban life that spell health and happiness to all dwellers in cities. When it

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means those things it begins to have a significance that every man, woman and child can understand.

A good housekeeper desirous of keeping her house clean and in good order, avails herself gladly of a hundred little time and labor-saving devices. These devices are an expression of "trained service." Dish-washing machines, bread-mixing machines, vacuum cleaners—all represent the cumulative effort of trained minds that know what a housekeeper needs and seek to supply those needs. House maids may come and house maids may go but the vacuum cleaner does about the same sort of work in the hands of one as of another. The municipality that seeks to keep its house in order has need of the same sort of devices. Only here they are human instruments rather than mechanical instruments. They are all comprehended in the classification known as the civil service. New mayors and councilmen, new superintendents of public works and police and health may come and go, but if a city has an efficient civil service the city's work will go on with little, if any, interruption. There was a time not so very long ago—indeed, there are still cities where the new day hasn't dawned yet—when municipal house-cleaning meant throwing everything and every-

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body out of doors whenever a new political party came into power in the city administration. Then the city's business came to a halt; when the city machinery was started again it started with jolts and jogs because it was not used to the work it was required to do. The city employees were part of the spoils of office. The party leaders insisted that the party machines could not be run without this reward. They insisted on taking this tribute at the expense of the city. The city suffered. It took many years to bring the people to a realization that this burden was a needless one. Even then they did not know how to eliminate it. Cities began to realize that their city governments could be more efficiently run if there were a body of trained servants always on the job, men who knew the city's business and whose chief interest lay in making it pay, and that these trained hands saved them taxes and gave them better streets and parks than the old type of untrained, machine-picked workers ever did. Thus gradually, as this idea took hold, the change was wrought.

A generation ago a municipal civil service on a merit basis was looked upon as a dream of impractical theorists. Today its practical value is scarcely a subject for argument. Not

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only reformers but practical politicians acknowledge its worth and effectiveness. Until the value of the merit system was really appreciated, there was no possibility of more than sporadic improvement in municipal administrative machinery. The two past decades have seen a wonderful change in this respect. Today cities, particularly the larger ones, that have not some approximation to a civil service based on the merit system are relatively few. And the efficiency of these systems and their steady extension and effective administration has been one of the most striking developments of the new municipal movement.

The creation of an efficient civil service on a non-political basis has come to be recognized more and more as a necessity as the scope of municipal functions and activities has broadened and developed, and as the number of employees engaged in the municipal service has consequently increased with the variety and importance of their service. An electorate is soon touched when it comes to the question of paying taxes. It will with only the natural amount of grumbling pay taxes to contribute to the well being and improvement of the city but it does not relish the idea of paying taxes for the support of a partisan political machine. It

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would prefer to make its campaign contributions in another way. Thus when a municipality is called upon to enter into a new field of municipal activity the people who are to be called upon to foot the bills are inclined to look into the matter pretty closely to assure themselves that their dollars will actually be used for the contemplated service. If the men who are doing the city's business are political appointees placed in office not for any reason of their ability or competency but because of work they may have done for a political machine or boss, the taxpayers are loath to have the city enter into the new undertaking. They know the general character of the work that these political employees are capable of doing and they feel no eagerness to let them continue that sort of service in new fields. The surest pledge they can exact that the money will be well spent and the city be fully benefited is that the work shall be done by a force of capable men chosen on a merit basis, whose first loyalty is to the city and not to a political machine.

When a city's business was small and its expenditures small and when the entire force of city employees constituted but an insignificant body of men, the taxpayers even though they recognized the fact that there was a certain

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amount of waste consequent on the partisan exploitation of the offices, were apt to be slow to feel its effect on their pocketbooks, and slow to protest against a continuance of the system. But as municipalities undertook new functions and new agencies and departments of government were created to look after them, entailing a larger force of employees and a larger expenditure for salaries, the taxpayers began to interest themselves to see that these employees not only actually did the work that they were paid to do but that they did it effectively. It was clear that there could be no assurance of this so long as all the minor administrative offices were filled by political workers as a reward for partisan work without regard to ability or training for the job. The result of this discovery was a demand for a standard or test of efficiency which found expression in the application of the merit system of appointment to municipal employees.

The old system worked with some approximation to success when all municipal functions were simple and when the financial and administrative methods of a city were little more intricate than those of a corner grocery; it broke down completely when municipal undertakings began to require a high degree of

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technical or professional skill and a proficiency in finance approximating to that required by great business corporations.

New forms of municipal government, no matter how clearly the responsibility is fixed, no matter how responsive they may be to the demands of the people of the city, cannot in the long run be effective unless they are based on a solid rock of administrative efficiency. Unless they have such a foundation they are mere houses built upon the sand—a foundation that will shift with every varying political wind or tide. The most capable executive placed in office by the overwhelming action of an awakened electorate would be helpless even with an up-to-date charter, if a proper system of municipal administration were lacking.

The difficulty in demonstrating the truth of this proposition so unmistakably that all are ready to accept it, lies primarily in the failure to appreciate the fact that the task of administering the affairs of a great city is business and not politics and that the two should be kept separate. Political parties strongly entrenched in municipal offices for a long time did all they could to becloud the issue. They have not by any means ceased this occupation yet, but the wiser heads among political leaders today sel-

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dom oppose the idea openly; most of them, indeed, endorse it.

The political opinions of administrative officers are of no importance whatever. Their honesty, intelligence and efficiency are of the utmost importance. And this applies not only to minor clerks and bookkeepers and laborers but fully as much to the great group of trained men upon whom cities are now coming to depend for so much of their best work. There is no more reason why the political views of a subordinate in a city department, whose duties are purely administrative, should be considered than there is reason for consulting a train dispatcher or brakeman or locomotive engineer as to the policy of a great railway system. The chief officers of a city—the executive, or legislative heads—should determine municipal policies just as the directors of a great business corporation determine the business policy of the corporation they direct. Their business is to adopt policies and see that they are carried out. To be carried out effectively and consistently this work must be done by a body of subordinates which is trained, loyal and conscientious. But in very few instances are the political views of these subordinates of any possible consequence. It is on this

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basis that an effective body of administrative public servants must be created. It can be established on no other basis as experience in municipal administration has proved.

The administration of a city's affairs differs very little from the administration of any great commercial or industrial corporation. For that very reason the need of trained service is greater in a city than in any other field of government. And this becomes increasingly true as cities enter new fields of public service and as that service concerns itself more and more with the social and industrial and economic life of the people of the city and less with their purely political relations. Nevertheless, it is true that until recently in our cities we have generally had the fewest trained employees in public service. We began with the idea that while it needed a statesman to run a nation or a state almost anyone could take care of a city. So it has happened that in the administration of cities, where expert knowledge and special training are most needed, there have been the fewest men with such qualifications employed. If city administration has been weak and haphazard it is a simple matter to trace the reason for this weakness and lack of order to the inexperience and incapacity of the men employed in municipal administration.

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It must be admitted that there is a natural tendency in this country—or at least that there has been such a tendency until quite recently—to distrust the so-called expert in public office and to look upon the creation of a professionally trained official class of public employees as a step toward the establishment of a bureaucracy, the very idea of which is repugnant to a democracy. This fear or distrust of the trained expert is, in part at least, based on the belief that he cannot be properly controlled. The same objections were often raised a generation ago to the establishment of a civil service and for the same reason. But as the civil service has become a settled fact without these fears being realized, the feeling has diminished if it has not almost disappeared. Nowadays it is pretty generally assumed that the mere trained worker in the civil service is sufficiently controlled by the civil service laws and regulations. And now the same old objection is raised in connection with the expert. However, the movement in the direction of a fixed responsibility is providing to some extent an offset to this danger—if danger it really be. It is entirely conceivable that uncontrolled experts, frequently relieved from the operation of the civil service laws, might in some cases use the power and

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authority that comes from their superior knowledge or greater usefulness, in such a way as to be a menace to popular government, although it is scarcely conceivable that they could ever do half the harm to the cause of democracy that the partisan municipal boss has done. But experts exercising their powers merely to carry out in an efficient manner, policies determined by those directly chosen by the electorate and responsible to the electorate, should be a source not of distrust but of confidence.

There exists a considerable difference of opinion as to the feasibility of selecting experts for the higher grades in the city administrative service on the basis of civil service examinations. Civil service laws were originally intended to destroy the spoils system and to lessen the political control of the lower grade of government employees. That was before the technical expert became the important factor in municipal administration that he is today. It has been questioned whether a municipal civil service commission as ordinarily constituted is capable of selecting experts and whether competitive examinations to ascertain the relative merit of candidates are applicable to cases where there should be a considerable

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degree of freedom in making a choice between applicants. Nevertheless, many civil service reformers declare that the merit system idea ought to be extended to cover these cases, and that if it is not flexible enough or comprehensive enough, it should be reshaped to fit the new situation. This has been attempted in some cities with a considerable degree of success. Nevertheless, those who express doubt that the civil service system can be satisfactorily extended to cover the selection of experts, make the point, among others, that while an expert occupying a high position ought to be properly safeguarded to assure the permanency of his position, the complete independence of the administrative or executive officers might lead to the lack of control which is so frequently urged against the employment of experts.

There is one problem in connection with the municipal civil service which many observers believe may prove a source of considerable danger to municipal home rule, if not an actual menace to local self-government. An argument against the creation of a civil service class when it was first advocated was that it would tend to the creation of a bureaucracy. This danger has shown little indication of developing in America. There has developed,

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however, a significant increase of a class feeling among civil service employees. The existence of such a feeling is of little consequence where the civil service employees are few in number. The rapid increase in the number and extent of municipal agencies, however, has resulted in making municipal employees a considerable numerical factor in most cities in the country. The power of this body of civil servants is increased by their homogeneity and their common interests. It is increased also by the fact that they have come to constitute an absolutely necessary element in city life and because their occupation in most instances brings them into close and intimate relationship with every other element in the city's population. It is in this situation that some people believe they see a sinister menace to municipal democracy.

It is only recently that municipal authorities have awakened to the fact that municipal employees are becoming more powerful than any other group of citizens not excluding the labor unions. The significance of this new force has been emphasized by the fact that although chosen on a non-partisan basis, they are distinctly "in politics." Their political activity, moreover, is not confined to elections, but is in evidence every day in

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the year. Their interests as indicated by their recent political activities in many states are primarily selfish. It would seem that they are concerned not only in efforts to improve their own condition—in itself a wholly commendable object—but more particularly in attempts to strengthen their own position and free themselves from their municipal obligations at the expense of the proper administrative control and the improvement of the municipal service. Their activities, as demonstrated especially in attempts to amend state laws and city charters, are concerned primarily with piling up municipal expenditures through such mandatory provisions as the creation of fixed platoon systems in fire and police departments, the creation of unscientific pension funds and the increase of salaries. They also frequently endeavor to loosen the administrative control of city authorities by extending the right of appeal to the courts through certiorari proceedings and by forcing reinstatements and rehearings in the case of employees who have been dropped or punished.

It is significant that this movement among civil service employees extends not only to members of the uniformed civil service but frequently to the employees in the Department

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of Education, including school teachers. It is a matter of concern that this class of civil servants upon whom the country must depend for inculcating into coming generations a proper understanding of the meaning of government and the obligations of citizenship should, as they have in many instances, make common cause with street cleaners and garbage gatherers in attempts to increase the city payroll and lessen the power of the city to control its employees. There should exist in the civil service laws of every state and in the civil service ordinances of every city, ample safeguards for the civil service employees. But even though it be agreed that education is and must remain primarily a state function, there ought to be, nevertheless, some adequate control in the hands of some city authorities so long as teachers are to be paid not by the state but by the city.

Neither statutes nor constitutions will avail to prevent the development of class feeling, but conferring adequate powers on a city to control its own salaries and employees will at least properly limit the development to individual cities and prevent the civil servants of various cities combining to force their demands on the cities through mandatory anti-home rule legis-

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lation. With the power and responsibility thus placed squarely where it belongs, it must be left to an informed electorate, acting through its chosen representatives, to apply the necessary remedy to conserve the interests of the city as against selfish class interest.

Both the home-rule movement and the commission-government movement have contributed to the improvement of municipal administration and the strengthening and extension of the merit system in municipalities. When cities obtain an adequate grant of home rule powers the realization of the new responsibility for municipal well being that is apt to accompany it usually develops a demand for an efficiently trained civil service that will be capable of carrying it on. City officers will hesitate to embark in new enterprises until they are assured that the city is equipped to carry them out. Home rule involves a power to control municipal officers and municipal expenditures. No such control can be made really effective so long as there is lacking an adequate administrative equipment based on a trained civil service. The impulse to create such a service under the circumstances is likely to be a strong one, and so it has proved in practice.

A similar impulse has been created by the

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spread of the commission government movement. The underlying idea of a commission form of government is a centralized authority that will be at once both responsible and responsive. At the very inception of the movement it was seen that it would be difficult if not impossible to make the system work if the machinery of administration and the men who run the machinery were incapable of the tasks assigned them or could not be relied on to do what they were told to do. The only way that such efficiency could be assured was in the creation of a trained civil service. So hand in hand with the shortening of the ballot and the application of the principle of non-partisan elections there has gone the establishment in most, if not all commission-governed cities, of a civil service based on the merit system.

To what extent should cities have control over their municipal civil service? Does a proper working out of the home rule principle require that the municipal civil service should be divorced completely from state control? These are some of the questions asked by civil service reformers and administrators, who have pointed out that a danger lies in a broad grant of home rule powers if it is to include absolute and unrestricted control by a city over the ad-

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ministration of its civil service. Many of these critics go so far as to take the ground that all civil service, state, county and municipal, should be under the direction and control of a state authority. They express the belief that the subject of the civil service constitutes one of the necessary exceptions to the home rule theory, and that state control in this regard means greater efficiency and a more complete divorce of the civil service from the influences of partisan politics.

Granting a city complete control over its civil service including not only the administration of the civil service law, and the making of local regulations, but the fixing of standards and of qualifications, would, without doubt, open the way for perversions and official nullification of the law in many municipalities. On the other hand, the system of almost complete state control such as is exercised in Massachusetts, while doubtless providing a most satisfactory and efficient service, is open to the charge that it interferes with municipalities in an entirely proper control of municipal employees, and thus tends to a shirking of responsibility on the part of administrators, and a contempt or disregard for authority on the part of the civil servants.

It is probable that the fullest advantages of

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home rule so far as the civil service is concerned, could be obtained under a system similar to that in force in New York State. The cities of New York need home rule in most respects very badly. So far as their civil service is concerned, however, they have the benefit of a well-balanced system which, while retaining in the state civil service commission the general supervision and some measure of actual control over local municipal commissions, at the same time leaves with the local commissions the right of initiative in local administration and complete control of detail. The New York system is based on the theory that the merit system should be a state system based on a general constitutional provision and on general state laws. Through the powers vested in the state commission, therefore, uniformity in the administration of the law and the enforcement of the constitutional provisions is secured. This supervision by the state commission provides a safeguard against the prostitution of the local civil service for partisan political advantage. It provides also an effective check against the failure to enforce the law by local authorities and tends to keep the whole civil service up to the standard established by the state commission. In this respect it is not only a check but

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also a very valuable support to local commissions which from time to time are apt to be subjected to undue pressure by local authorities.

This system has worked well in New York State. Experience has shown that the proper balance can be maintained. Local civil service commissions have worked out their own local problems with the assurance that they could have the support of the state commission if they needed it and with reliance on the state law from which they derive their authority. The state commission has not attempted to usurp the powers of local commissions and has probably been able to accomplish more for the merit system and with less friction than would have been possible had the complete control over local civil service been vested in it.

Control over its civil service must be included in any catalogue of legitimate and necessary home rule prowess. That control may be limited by conferring on a staff board general supervisory powers over such service in general, and certain authority over local commissions. But direct administrative control should be vested in the city authorities.

CHAPTER X

PUBLIC UTILITIES

No discussion of municipal home rule—the power of a city to work out its own municipal destiny—would be complete without a consideration of the relationship of the city to its public utilities. The problem, however, is so intricate, and in many respects requires a discussion of factors so technical and involved in character, that little more can be done here than to sketch the part the public service situation plays in the new municipal movement, and to indicate its bearings on the broad problem of home rule. To do this it will be necessary to review briefly some of the more marked phases of recent public service development and to give some consideration to the principle involved in the situation.

This problem is complicated at the outset by certain factors which cannot be lost sight of in any effort to apply remedies to apparent evils. One of those is that in dealing with public util-

ities we are dealing with a class of interests that by reason of the indispensability of the service rendered, and their close relation to the every day life of the community, justify the exercise of extraordinary powers of regulation and authority. The importance of this factor is emphasized by the essentially monopolistic character of public utilities and the impossibility of leaving such matters as rates or the efficiency of the service, to be regulated by competition, which under ordinary circumstances would be apt to result in chaos rather than regulation.

From the point of view of the advocates of municipal home rule, the public utility problem, like the problem of the form of a city's government, the authority of city law-makers, the plan of its city elections or the control of city property, is solely a question of adequate powers to do those things which concern the city for the city's welfare. It is in reality a phase of the broad proposition—and by far the most puzzling phase—of the control of city property; for a public utility franchise is the grant of a right to use city property. In its practical application this question divides itself into two general aspects: First, the problem of whether the city or the state or both should exercise control and

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regulation and in what measure, and secondly, the problem of whether a city should own and operate its own public utilities.

As it stands today, the consideration of the extent to which a city may go or should go in controlling, regulating, owning or operating its public service agencies, presents some of the most difficult problems American municipalities are called on to solve. The books and pamphlets written on the subject would fill a good-sized library. The problem is certainly a debatable one. But it is made more difficult to settle because of the fact that those holding opposing views seem so frequently inclined not to join the issue squarely.

Like every other municipal problem in America, this problem developed from the changing conditions of urban life as the needs of a growing community expanded and the service a city required for its inhabitants increased. As municipal needs were disclosed some new agency was devised to satisfy them. Usually these new agencies, whether commercial or philanthropic, were the result of private initiative. So in almost every city in the land, there grew up private corporations that were occupying a particular field and providing service for the public in the form of lighting, water supply, transit

facilities and so on, on the basis of franchises obtained in a great variety of ways and disclosing remarkable differences in terms and conditions.

For some time the cities themselves appeared to be wholly uninterested in the terms of these contracts; it did not seem to worry them that they had given away rights in perpetuity, tied the hands of future generations in coping with the corporations they had created, or saddled their descendants with a load of debt. They were apparently satisfied when their own immediate comfort and convenience was met. The conditions which led to a change in the attitude of the public and to the consideration of whether these corporations were giving an adequate return in service for their privileges, which so frequently in practice amounted to a virtual monopoly, are not difficult to trace.

There is no gainsaying the fact that most of our municipal public service corporations possessed both energy and enterprise. What they have apparently lacked is foresight, not as to their own vested interests but that foresight which consists in an appreciation of the fact that overwhelming greed and a dulled sense of political ethics would surely in the long run arouse a spirit of public revolt. Had they

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adopted in the beginning a policy in which enlightened public interest played some part, the crisis would have been slow in coming. They did not appear to realize that a corporation providing public service must seek not only to please its public but to treat it fairly. A majority of them did and many still do apparently proceed on the theory that the public owed them everything and that they owed the public little or nothing except the service for which they received payment.

This policy on the part of public service corporations was signalized by their attempts to get everything they could for nothing and to drive as sharp a bargain as possible for what they were compelled to pay for. In accomplishing their purposes they frequently engaged in all sorts of sharp practices including often the bribery of public officials, political leaders and political parties. They excused their actions on the ground of self-defense and self-preservation. Thus was created that close alliance between corrupt business and corrupt politics, the termination of which has presented one of the most serious problems in American politics.

It was the tardy realization of this evil that at length aroused cities to demand that some

way be found to eradicate it. But it had already eaten its way into the very fibre of our political life. The people of one city began to look about and inquire how other cities were attacking this disease. The same latent civic spirit that finally and successfully rebelled at the incubus of the spoils system, that weakened the grip of party bosses and rings in city affairs, demanded that public service corporations should withdraw from politics and be forced to give their attention to serving the public.

All sorts of remedies were suggested. Among these proposed correctives were publicity of campaign contributions and the prohibition of such contributions by corporations, publicity of corporation accounts, referendums on franchises, limitation on franchises, stipulated payments for franchises enjoyed and the control by a municipal or state body over the capitalization of corporations, their extensions, their financial transactions, the quality of their service, and the fairness of their rates. The most radical remedy proposed was municipal ownership and operation.

With some of these proposals we shall not concern ourselves: they have no bearing on the subject of the powers of a city, and can be

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safely disregarded in a discussion of the issues involved in the problem of municipal home rule. That is not true, however, of the proposals for government regulation and control, nor is it true of the question of municipal ownership and operation.

Taking up first the subject of regulation and control, we find ourselves at once precipitated into a controversial field. This is one of the subjects that has led to radical differences of opinion even among those who are in pretty general agreement on most of the debatable points in the home-rule movement. It is undeniably true that the tendency of recent years has been toward state control of public utilities through a state commission. This proposal has been widely accepted as the most effective and satisfactory method of dealing with municipal public utilities. In its most extreme application it would have the practical effect of completely abolishing the power of municipalities to control local public service situations either by the terms of franchises or by local regulation. This tendency, according to those who contend that a city must possess adequate power to control its own public service agencies if it is to work out its own municipal destiny successfully, has gone altogether too far in the

direction of centralization in the hands of the state authorities.

This difference of opinion has resulted in two movements, tending apparently in diametrically opposite directions, one directed toward the extension and strengthening of municipal authority over public utilities, the other moving toward the complete elimination of local control and the substitution of state control and regulation in its place.

Those who advocate exclusive control by a state commission start with the proposition that every demand for efficiency and economy points to state control, as the only proper method. They contend that only through such control can waste and inefficiency, duplication of effort and conflicts of jurisdiction be eliminated. They believe that only thus can there be worked out a consistent and comprehensive regulatory system, based on precedents that have stood the test of wide practical application.

For another reason they contend that local control must prove impractical and ineffective. This is that with the rapid extension of inter-urban traction systems, the question of transit cannot longer be considered a local matter. They point to instances in which a single gas or

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electric company or water-supply system is made to serve more than one community,* and as for telephone systems, they seldom, if ever, operate solely within a single city.

A further objection to local control is directed at the possible prejudice that might arise in the case of a local regulatory body, which would be subjected to local public and political pressure, from which a state body would be free. Finally, it is argued that purely as a practical proposition few cities, and these only the very large ones, could afford to support an adequate local commission of such a character that its conclusions and orders would be based on scientifically ascertained knowledge of such a character as to give assurance either of value or impartiality.

Those who believe in including local authority over public utilities in a city's home-rule powers, do not all insist that the city should

* A recent case of this sort attracted attention in New York. The city of Mount Vernon, which adjoins New York City on the north, sought permission of the State Conservation Commission as required by law, to tap New York's aqueduct. The Commission refused on the ground that the private water company which now serves Mount Vernon and several adjoining towns, if deprived of its income from Mount Vernon could no longer afford to serve the smaller communities which would thus be left without adequate water supply. The legislature last year sought to settle the matter by eliminating from the law the provision requiring the consent of the State Commission.

necessarily retain exclusive jurisdiction over its public utilities. Instead of taking this extreme ground, they acknowledge the weight of many of the arguments made by the state control advocates, but express the view that a practical basis for a division of authority between the state and municipality can be found, which will maintain the principle of state control in a well-defined field, and at the same time recognize the home-rule principle. Despite the known instances where some public service agencies serve more than one community, it is maintained that these are exceptions, and that it cannot be fairly or seriously argued that public utilities are not essentially and primarily urban in character.

Thus while believers in home rule are firm in the conviction that the control of public-service functions is essential to a satisfactory acceptance of the home-rule principle and, therefore, should remain as far as possible with the local authorities, they admit that any system of control to be both effective and comprehensive, should also recognize the principle of cooperation between local and state authorities. A city, for instance, should clearly have control of its streets, and be able to decide for itself on what terms they may be used. In furtherance

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of a city planning program or improvement for the relief of congestion of population, it should have some authority over necessary changes in its traction lines. It should be able to determine the adequacy of service rendered, the terms on which it shall be rendered, and be able to regulate if not to determine finally the difficult matter of extensions. The state, on the other hand, might logically regulate such matters as the capitalization and bond issues of public utility corporations, their method of accounting and its publicity, and apply uniform rules to safeguard the stability of investments.

Here again the problem resolves itself into one of adequate power. Many small cities will not care to maintain a regulatory commission, and will be satisfied with a minimum of control over the streets which may be exercised by ordinance of the local legislative body or a city department. But every city, large or small, should have the power to assume authority in a well defined field through a local board if it wishes. Failing that there must reside in a state board a broad, general jurisdiction to be exercised in the country districts and in those cities which are not ready to avail themselves of this home-rule power. Finally, if a local board has original jurisdiction, over such mat-

ters as rates and extensions, there should be an appeal allowed to the state board.

One of the considerations urged by those who favor municipal rather than state control of public utilities, is that the public service corporations prefer state control, in fact, that they are to some extent responsible for the wide acceptance of the idea. The argument of those who distrust state control is that the demand for it does not come from the cities and that it did not appear until after the home-rule movement was well under way. By these then it is pointed out with justice, that the state has never shown itself particularly careful of the rights of cities and that cities have suffered much from the action of state authorities in thrusting upon them franchises and public utility legislation without the most careful regard for the welfare of the city. The state has not only failed lamentably in its obligation to protect the cities against corporate abuses, it is contended, but by its refusal to allow the cities the exercise of adequate powers, has rendered the city incapable of defending itself and often put it absolutely at the mercy of public service corporations. Both the legislature and the courts, it is contended, with a great deal of truth, have been responsible for this unhappy situation. For

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these reasons many home rule advocates look on the movement for state control with distrust and suspicion.

To the complaint that the local authorities, being interested parties, cannot be trusted to control their local public utilities, it is pointed out that the same argument carried out logically might apply to control by the state of railways and other corporations in which the people of the state are interested. There is thus raised squarely the question whether state or local control would be most likely to result in a fairer and more intelligent control farthest removed from the political influences which have been the greatest obstacle to progress and improvement.*

In considering the question of control and regulation, moreover, it must be borne in mind that there is a multitude of factors that make

* Prof. J. Allen Smith of the University of Washington, in the "National Municipal Review," January, 1914, makes the following point in regard to the controversy between advocates of municipal and state control:

"One argument of which much is made by the promoters of state control through a commission, is that such a plan will take the question of public utility control out of politics. It is easy to see that in depriving cities of all power in relation to public utilities, this vitally important matter is in fact taken out of municipal politics. It merely transfers this question, however, to another and larger political arena, the state, and in this arena the public utility corporations by making common cause hope to secure more satisfactory results than is possible through the now democratized municipal governments."

the subject unusually difficult, and that not the least of these is that the problem presents radically different aspects in different parts of the country, and indeed in every municipality. This frequently makes it hard to maintain an argument for one type of control as against another. In a part of the country where the cities are widely separated, the problem presents aspects that do not apply to a metropolitan centre with numerous populous suburbs, to a region where cities are as closely located as they are in some of the populous eastern states, or to neighboring urban communities located partly in one state and partly in another.

Each of these classifications must be considered as presenting a distinct and separate problem. So also must the relative size and financial capacity of a city be considered. Yet difficult as all this may seem, there should be no insuperable obstacle in the way of working out a plan that would prove of greatest advantage to the locality and still maintain the essentials of the home rule principle.

Before discussing this subject, reference must be made to one of the most serious and perplexing problems in connection with the public utility situation. This is the fact that we are here dealing with a problem that not only presents

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perplexing difficulties in the way of an equitable adjustment of public and private interests in the future, but even more serious and puzzling difficulties, in connection with existing franchises. The difficulty lies in the fact that throughout the country there are many perpetual and irrevocable franchises in force. No satisfactory method has yet been devised to force companies enjoying such franchises to comply with public demands for extensions or improved service. It has come to be generally recognized that the granting of perpetual franchises is bad public policy. It is equally well recognized that the existence of perpetual non-revocable franchises is a constant menace to the present and future welfare of the cities or to any satisfactory or permanent adjustment that will assure adequate regulation and reasonable service. The question is what to do about it. So far it has not been settled.

Such a problem would be comparatively simple in Europe, where franchises are looked upon as mere licenses revocable at the will of the authority that granted them. In the United States the situation is made more difficult by the existence of constitutional provisions forbidding the impairment of the obligation of contract or the taking of property without due

process of law. The tendency of our courts is to construe franchises as virtually contracts between the city and the corporation. This imposes a serious obstacle in the way of a solution of the problem. On this subject the Committee on Franchises of the National Municipal League in its report for 1913 says:

“In our opinion it is essential to the proper development of the utilities of any city and to the full realization of the principles of public control that in all cases where the outstanding franchises run in perpetuity, or for unreasonably long periods, the city should definitely set about devising means for recapturing them. We think that the municipal and state authorities are justified in using legislation, litigation, taxation, negotiation, and all other available means to secure the termination of perpetual and very long term franchises, and to compel a readjustment of outstanding rights on the basis of thorough-going protection of the investment under the terms of new franchises which will recover to the city the control vitally necessary to its future welfare.”

The idea of municipal ownership does not today inspire so much dread in the conservative mind as it once did. This is not the place to discuss the principles involved in the proposition, even if it were possible to do so in brief compass. It will not even be attempted to argue

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the practical issues involved save in so far as they have a more or less direct bearing on the problem of a city's powers to run its own affairs in a manner calculated to be of the greatest service to its inhabitants. Whether a city ought to undertake the responsibilities of municipal ownership and operation of its public service agencies, and on what terms, is a question that must be considered in the light of the peculiar needs and conditions, financial and otherwise, of each individual city.

But there are certain aspects of the problem that have a direct relationship to the subject of municipal home rule, and as such cannot be disregarded.

Of these the most pressing, perhaps, is that which may be considered, if you will, as a first step toward municipal ownership, namely, the inclusion in every franchise granted of provisions for the recapture of the franchise by the city and the terms on which the corporate property may be acquired. In the light of the more intelligent consideration of all franchise questions, and the movement for short term franchises or indeterminate franchises revocable under stated conditions after a certain time has elapsed, the subject of the terms on which cities may acquire municipal utilities has re-

ceived much consideration. We shall here merely emphasize the point that provisions in the state law should make possible the inclusion in municipal franchises of the conditions and terms under which local public utilities may be acquired by the city. There will always be obvious limitations in the way of the practical application of this program, but they should be financial difficulties only, and not in any way limitations on the right and power of the city to act if it is financially in a position to do so. Likewise, provision should be made in law whereby a city which is financially able, may construct and operate a public utility of its own. On this question of the importance of conferring on municipalities the power to carry out such a program, President Frank J. Goodnow declares:

“If there is one point in this matter upon which the opinion of the European world is practically decisive, it is that cities should have the power under proper limitations to enter upon the field of municipal ownership and operation. * * * The importance of the possession of this power by the municipalities can hardly be overestimated. For the knowledge on the part of the private companies that the power can, and the fear that it will, in an extremity, be exercised, are most effective in se-

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curing from private companies about to operate or operating public utilities, the adoption of a policy which has regard for the important public and social interests at stake. Where this power does not exist companies are apt to consider that they are conducting a merely private business; and in the case of these public utilities private interest and public need are often in conflict. (Goodnow, "Municipal Government," p. 360.)

Comparatively few opponents of municipal ownership and control base their argument today on the socialistic aspects of the proposal. The experience of cities in operating water-supply systems and many other agencies of a public service character, has become so familiar and has proceeded on the whole with so little disturbance of existing political or economic conditions, that a further extension of city authority cannot be successfully fought merely by conjuring up the bugaboo of municipal socialism. They are content to rest their opposition on more practical grounds in which they emphasize particularly the financial and administrative difficulties involved. The experience of European cities is sighted both for and against the proposition. Many opponents of municipal ownership deny that any reliance can be placed

on such experience on the ground that it is wholly impossible to compare conditions so essentially dissimilar as those under which the affairs of European and American cities are managed. Into this controversy there is no necessity for us to enter, for we are considering here, it must be recollected, primarily the subject of adequate municipal powers.

An objection often raised to conferring on municipalities the right to control or own and operate public utilities, is that the people of a city cannot be trusted to carry on such an important work and that all the people of the state are concerned to see that the city shall not bankrupt itself or establish dangerous precedence by its action. It is held that the self-interest of a city often precludes it from considering such matters without prejudice or of acting fairly or even reasonably in respect to them. Every true advocate of municipal home rule must demur to such a broad indictment. He will admit that in rare cases city authorities may overstep the proper bound, or that a popular outburst may result in a false step being taken. But these will be exceptions that will prove danger signals for other cities. They do not in themselves constitute a valid objection to the general proposition. And, furthermore,

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there is no reason why the restrictions of a state law, may not to a considerable extent, be made to minimize or prevent such lapses on the part of the city authorities. Indeed, the laws of most states throw limitations about municipal expenditures that have proved effective in deterring cities from bankrupting themselves. Moreover, the progress of the past decade in the direction of a fixed responsibility for municipal officers, which has been one of the striking features of the municipal reformation, must in itself act as a deterrent to rash action on the part of a city. This change will be strengthened by the prevalence of the new municipal spirit which means that cities are, as a rule, pretty wide awake where the question of their rights and responsibilities is concerned. Under such circumstances, there is little reason to contend that the state must step in if the city is to be saved from itself.

Equally important in its bearing on the subject we are discussing is the question of municipal administration and the civil service. So long as party politics play a controlling part in city affairs there will exist an effective and logical argument against the municipal ownership of public utilities. In no activity in which a city might conceivably engage is it more im-

portant that it be kept free from partisan political interference than public utilities. The existence of a civil service on a partisan and not a merit basis would be an insuperable obstacle. No city could contemplate with complacency the multiplication of municipal jobs which should require expert or professional training but which would be filled on the basis of service to a political party. Too often public service problems have been made political; too often public service corporations have been "in politics." It would be unthinkable if the public employees engaged in operating public utilities were also to remain "in politics." The development of the merit system has raised the hope of friends of municipal ownership. Gradually cities are moving in the direction of the municipalization of water and lighting systems, garbage disposal plants and so forth. And as the feasibility of operating these municipal activities through employees chosen on a merit basis is being proved, the further step of applying it to traction lines is receiving more serious consideration and does not appear to be so wholly impossible as it did some time back.

From the standpoint of adequate municipal home rule, therefore, it seems clear that certain points in connection with the problem of mu-

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municipal public service utilities are fairly definite. Admitting that there should be a certain degree of state control and regulation of public service corporations in respect to those functions that can best be regulated in a uniform manner by a state board acting under a general state law applicable alike to all cities, it, nevertheless, seems evident that in respect to certain matters in which from their nature the city alone can have concern, the city authorities should retain a definite measure of final authority. A city endowed with home-rule powers should be able to determine for itself what the character of service shall be and on what terms franchises shall be granted and on what terms a public utility may be recaptured. It should have the power to exercise its authority if it chooses through a local regulatory board, from which in certain matters, an appeal would lie to a state commission. Furthermore, a city should be able, if it so desires, to enter the field of municipal ownership and operation, under such restrictions and limitations as a state law might impose. No state law should prohibit such an extension of municipal powers, purely home rule in character, nor should handicaps be placed in the way of a city's paving the way for such a move by insisting on provisions for re-

capture or acquisition under proper conditions of any franchise it grants to a private public service corporation.

CHAPTER XI

MUNICIPAL FINANCE

No one principle is more essential to a proper application of the theory of municipal home rule than that which demands that a city shall have control of its own budget and its own payroll. Yet in practice in our American cities no one principle has been more frequently ignored or more flagrantly violated. In this matter of city finances, as in most matters pertaining to municipal affairs and government, we began with a wrong conception of what a city was. It might be even more accurate to say that we began with no conception whatever of a city's place in our scheme of government, of its obligations to its inhabitants, or its possibilities of service to those that dwelt within its limits.

Little realizing what a considerable part of the burdens of life and government must in the future be carried of necessity not by the state or the nation, but by the city, our fathers treated the city as a mere irresponsible child.

The needs of cities were simple then; it took but little money to run them. It was sufficient that they get along on such resources as were left after the paramount requirements of the state or nation had been satisfied. Under such circumstances it is not remarkable that the cities themselves felt no sense of responsibility. Nor is it remarkable that it took them a century and more to begin to appreciate either their opportunities or their obligations. When they did awaken to these facts it was too late. The evil had been done, and it is only by slow stages, and the most intelligent and unremitting effort that cities are able to attain a fair degree of financial independence and autonomy.

The gravest of these evils which have been fastened on the cities is primarily political. It established and has continued the principle of state control of municipal finances through the agency of the legislature, which has placed many of the cities of the country on the plane of captured provinces to be exploited and bled for the benefit, not so much of the state itself as in the interest of the particular political party which happened to control the legislature. Thus municipal finances have frequently been made a football of state politics. Freed entirely in most instances from such constitu-

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tional restrictions as a home-rule provision in the constitution would impose, legislatures have gone on their way, adding to the financial burden of cities by the enactment of all sorts of onerous, special local laws and anti-home rule mandatory payroll legislation, and at the same time have turned a deaf ear to the constant pleadings of the cities for relief. They have not only denied relief, but in one way and another they have deprived the cities of the right to solve their own problems and have given them nothing to recompense them for what they have taken. If it could be said that all this was done with the end in view of safeguarding some great principle of government, there might be at least some excuse for it. But legislatures, with few exceptions, have not shown the smallest appreciation of the necessity of providing for the growing needs of cities, either by their own action or through conferring adequate powers on cities.

The second great evil that our cities are suffering from financially today, is the prodigality of the authorities in earlier days in giving away rights and property which might now be very considerable sources of municipal revenue. As a rule, these have consisted in the bestowal of invaluable franchises in perpetuity. Not only

did cities deprive themselves of the right to take over and manage these properties, but as a rule they made no provisions whatever for a fixed revenue in return for the grant. Thus a perfectly legitimate and natural source of municipal income has been lost in many cities for all time to come.*

The extraordinary increase in urban population has forced on cities the imperative necessity of meeting new conditions either by the creation of new agencies of municipal service or by the expansion of existing agencies. All this required money. As a result the cost of running cities has been annually mounting higher and higher, until the question of how to make both ends meet has become the most pressing of all municipal problems. If a city failed to find the way out its municipal service was apt to be crippled; if it went ahead and provided the service without carefully counting the cost, the city finances were crippled. Thus it would frequently happen that the adoption of either alternative became a serious obstacle to

* Most franchises now granted do, to be sure, provide for some adequate return in the shape of an annual rental or a percentage of gross income. What European cities have gained from the retention of public service income may be seen in the fact that some German cities derive as much as thirty per cent of their income from such sources, while the similar income of English cities frequently exceeds twenty per cent of their total revenues.

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real municipal progress. Some of this increase in expenditure can be charged to outright extravagance, some to recklessness and the lack of a proper sense of responsibility on the part of city officials, some to a needless duplication of effort due to poorly organized departments or to antiquated methods of doing business, some to inefficiency and lack of understanding of municipal problems and a great deal to the interference or exploitation of political parties.

But when due allowance is made for all these unnecessary elements it must be admitted that by far the greater part of the extraordinary increase in municipal expenditures in recent years is unavoidable, and must be accepted as a just obligation if cities are to live up to the highest ideal of effective public service. The waste and extravagance due to inefficiency and politics can be and must be eliminated. They are fatal obstacles to progress. The increases due to an attempt to satisfy growing municipal needs represent progress. The city of today is called upon to serve not only the people living within its limits, but also all those who carry on business within its limits, in a multitude of ways of which the cities of even two generations ago had but the vaguest conception. It is this

expansion of the idea of municipal service in its broader meaning, comprehending problems of rapid transit, water supply and lighting, public health, vocational education, recreations and institutional help, that has brought cities to a realization that sources of revenue which met the requirements of an older day were wholly inadequate to meet the new demands, and which has set municipal financiers figuring on ways and means whereby they may tap new sources of revenue and thus not only supply growing municipal need but bring about a more equitable adjustment of the burdens of taxation.

The elimination of these simpler and on the whole lesser difficulties is not only possible but it is being rapidly accomplished. They are all primarily problems of administration. Experts with the aid of surveys and other special agencies are disclosing these evils, and pointing out practical remedies. The newly awakened civic spirit is doing the rest by insisting on a higher ideal of public service, and a higher type of public servant. Extravagance, corruption and waste are being checked or eliminated by greater publicity, and by the fixing of responsibility therefor. Politics in its partisan sense, is being forced into a place in cities where it can at least do less harm than formerly. New meth-

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ods of accounting and bookkeeping, reorganization of departments to prevent duplication of effort and over-lapping of functions, standardization of salaries, efficient methods of city purchasing, are all helping to eliminate these evils from consideration.

In this movement there is increasing evidence that the politicians have recognized the power of the awakened civic spirit. They know that the experience of history teaches that there is no point in regard to which a people are more apt to show concern than in the payment of taxes. Whether or not politicians have realized—and some of them surely have done so—that business and politics do not get along well together in the administration of municipalities, they have certainly recognized the benefits that will accrue from the elimination of the danger of making a political issue of an increased tax rate that is due to inefficient administration for which the representatives of their party may be held to account by the voters.

But with all these difficulties solved or on the way to solution, there still remains and must always remain the great problem of adjusting municipal expenditure to constantly growing municipal needs. Any good housekeeper ought to have a fairly adequate idea of what the ex-

penses of running her establishment for a given period are likely to be and what her income is for the same period. If she is careful she will adjust these expenditures to the amount of her income. If she loses control over her household budget, she finds herself involved in a serious problem to make ends meet. It is exactly the same with the city. If a city controls its budget that city is much more apt to be sound financially than one whose budget may be unexpectedly increased to an extraordinary amount by mandatory anti-home rule legislation, so commonly indulged in by state legislatures. State legislatures have always seemed to have a strange itching to meddle with budgets of rich and populous cities. Sometimes this meddling takes the form of a special law imposing a payroll increase on an individual city, sometimes in legislation of a more general nature, mandatorily forcing on cities of a certain size or class, general state laws requiring expenditures that swell the municipal budgets, without the least consideration of whether or not the cities can stand the strain. The one sort of interference has just as disastrous an effect on the city budget as the other. As a matter of fact, however, under our existing legislative system, it is rather easier to pass

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special mandatory payroll legislation for a single city than similar legislation applicable to all or a certain part of the cities in the state. The wide-spread protest in the latter case, will, in a majority of instances, defeat the proposition. A proper consideration for the home-rule rights of cities, therefore, would involve an absolute constitutional prohibition of special mandatory payroll legislation, leaving it to the alertness and watchfulness of municipal authorities and taxpayers to see to it that no vicious legislation in the form of general statutes is enacted.

It is difficult for a city to go very far in the direction of a municipal budget without adequate home rule powers. The plans of the most careful municipal financiers can be nullified in a day by the caprice of a state legislature acting without adequate knowledge and frequently for purely partisan or factional reasons. A municipal budget is wholly the concern of the city. It affords an opportunity for municipal orientation. It is the point at which the city administrators take the taxpayers into their confidence and consider with them a definite plan of expenditures for the year to come. There is a sort of a family conference among the municipal housekeepers. The scrutiny of the proposals and estimates of available reve-

nues for the coming year, the necessity for giving reasons for things and providing facts and figures to back up these reasons, and through it all the healthy publicity that all this entails, help to make the municipal budget system an important instrumentality in municipal home rule. Furthermore, the presentation of the budget proposals by the city authorities affords the best opportunity for a discussion of matters of public policy affecting the municipality. At such a time should be clearly thrashed out the arguments for and against important propositions that are too often left to be picked up by a political party merely because the backers of that party are seeking some municipal campaign issue. The discussion of these problems at such a time—problems that are primarily administrative or financial rather than political—will serve to prevent their being used as political footballs.

One point on which there has been some radical difference of opinion is the extent to which a city can be trusted to take care of its finances. It has been a pretty well established practice in the United States to provide constitutional or statutory limitations on the power of cities to incur indebtedness. This is clearly a limitation on the home rule power of cities, but it has

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proved and doubtless will continue to be considered an entirely justifiable and effective check on municipal extravagance. There are frequently times when a municipal administration imbued with an ambition to "make a showing" for political or personal advantage, develops a tendency to embark on a career of financial extravagance that would virtually bankrupt the city. Such tendencies must be checked. It is not enough to say that it is a city's own fault if it allows its administration to put it in such a position. It is a matter of concern not alone to the city itself or to those people who might directly or indirectly profit by the municipal improvements undertaken. It is a matter of concern to the whole state that its cities shall not be bankrupt and that their financial soundness may be unquestioned. It is a matter further of concern to future generations who must live in the city that they shall not be called on to pay for the reckless extravagance and prodigality of those who came before them. It is of particular concern that they shall not be compelled to pay for improvements that have benefited a past generation and have been outlived or outworn.

A constitutional check on the power of a city to incur debts may, therefore, be considered as

one of the necessary and justifiable limitations on municipal home rule. Then, again, there should be limitations on the power of a city to become indebted through bond issues extending over such a long term that the improvement for which they were issued shall have been outlived. Bonds should not be issued for a period longer than the life of the improvements for which they were intended.

Furthermore, the responsibility for the issuance of bonds should not rest entirely—certainly not in the case of large bond issues—on the city authorities. While it is perfectly possible to hold the city officials responsible and punish them or their party for their actions should they again become candidates for office, such retribution would come too late. For the bonds once issued naturally become an obligation binding on the city no matter how much opposition there may have been to their issue originally. With a view to providing an additional check it is frequently required that bond issues shall be submitted to a referendum. As a matter of fact, referendums on bond issues in some states have been common practice for many years. They have fully justified themselves in operation. It is probably better that they should be a matter of general state law

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applicable to all cities, rather than be left to the provisions of a city charter.

In order to provide for the payment of a bond issue at maturity, it has been customary to create sinking funds in order that the amount of the principal may be distributed over a period of years. Recently, however, the disclosure of certain facts in connection with the wastefulness of sinking funds and their inequable operation have led financiers to favor the issuance of bonds in serial form. This form of bond issues has many advantages over the sinking fund systems. It is safer and more equable and cheaper. It is never possible to determine absolutely the necessary annual contribution to a sinking fund. The fund itself fluctuates with the change in interest rates. Frequently, the accumulations are unnecessarily large. Sometimes they prove inadequate.* Bonds issued in serial form become payable, principal and interest alike, in equal annual instalments. A twenty year bond issue, for instance, would be payable one-twentieth each year. The interest

* Figures from a report on the condition of Massachusetts' municipal sinking funds (1912) showed that in forty of the eighty-five municipalities examined there was an apparent failure to provide adequately for the payment of the debt at maturity. The deficiency in these funds alone was computed at \$1,794,391. (See article by C. F. Gettemy, director of Massachusetts Bureau of Statistics in "National Municipal Review," Oct., 1914, Vol. III, No. 4.)

would be chargeable only on that portion of the principal remaining unpaid. At the end of ten years, therefore, the outstanding principal would be but one-half of the original amount and the interest would be payable only on that one-half. In the mere matter of interest rates, therefore, if the bond issues are of considerable size the saving to the city is enormous.

Sinking funds, furthermore, must be placed in charge of some individual or board for investment. There is an opportunity here for malfeasance or misfeasance in office. Sinking funds have been known to disappear completely. They are open to speculation and embezzlement. The officials having them in charge have shown a too frequent tendency to invest them as a matter of political favor, either with banks controlled by their political friends or in such a way as to benefit politicians or parties rather than the public. There is no such danger in the case of serial bond issues.

Finally, the serial bond system tends to remove a tendency toward irresponsibility on the part of municipal authorities in incurring the debt. The sinking fund system enables a city administration to throw over all responsibility for the payment of the principal on a future administration or a future generation. All it

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has to concern itself with is meeting the first year's interest charge. If a city administration is compelled, as it would be under the serial bond system, to find a way of making appropriations to meet the first payment of its principal within a year after issue, it is likely to be more careful in incurring debts through bond issues.

So important has it seemed to experts in municipal finance that the danger of sinking funds should be entirely eliminated that steps have recently been taken in several states to prohibit their establishment. This was done by a statute in Massachusetts, which took effect in 1914, in which it was provided that henceforth all municipal bond issues should be in serial form. An attempt to apply the same restrictions to New York's cities with a limitation of fifty years on the bond issue and provision that it should not run for a longer period than the life of the improvement, was made a part of the defeated constitution of 1915.

There ought to be no obstacles in the way of cities adopting and putting into operation new methods of accounting and auditing. With such reforms there should go improvement in the municipal machinery necessary for the preparation of an annual budget or financial plan. Pro-

vision should also be made for a standardization of offices and salaries, and for a central department or bureau of purchasing. It ought not to be necessary for any city to go to the state legislature for permission to inaugurate purely administrative reforms of this sort. Where no charter changes are required many cities probably have the power to take these steps today. This does not mean, however, that it may not be both helpful and advisable to have the legislature by general law regulate these matters for all the cities of a state. Just as the statutory or constitutional restriction on the borrowing power of cities has been found to work well, and to be no more than a justifiable check on municipal expenditures, so a general state law providing for adequate and measurable uniformity in municipal accounting and auditing would doubtless have the effect of forcing backward or careless cities to safeguard their expenditures for their own good. Such a law would no wise imperil the principle of municipal home rule.

A great many financiers believe that there has been altogether too strong a tendency in American cities to have recourse to bond issues for the payment of all sorts of debts. This has led to the belief on the part of many city au-

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thorities that the city could bear almost any burden of debt so long as its bonds were properly amortized. Bonds are frequently issued, within such limitations as the state law or constitution may prescribe, for all sorts of things. They have been issued not only for revenue producing improvements, but for non-revenue producing improvements; not only for permanent improvement, but for temporary improvements and for special purposes and current expenses that did not fall under the head of public improvements at all. Furthermore, there had grown up in many cities the dangerous practice of issuing bonds for the purpose of meeting other bonds at maturity. Thus frequently was extended indefinitely the payment not only of bonds for permanent improvements, but of those issued for meeting current expenses or in anticipation of the collection of revenue. As a result of this procedure the bonded indebtedness of our cities is enormous. Many believe it to be needlessly large and insist that its existence constitutes a constantly growing menace to the creation of any system of sound municipal finance.

The extent to which this sort of thing has been going on has indicated a woeful lack of understanding of municipal finance and a total

lack of appreciation of municipal responsibility. The point of view is similar to that of the advocates of fiat money. To the query "How are we going to get the money?" their reply would be, "Start the government printing presses." So to the question, "How will the city pay for this?" the bland reply has too often been, "Issue bonds for it."

This too frequent and often irresponsible method of piling up municipal indebtedness by bond issues has recently been the subject of considerable attention and several noteworthy attempts have been made to restrain or regulate it. In Massachusetts this has taken the form of an act prescribing the specific purposes for which fixed or funded debts may be incurred, and the prohibition of borrowing money for any other purposes than those enumerated in the law. In New York City the authorities adopted the emergency expedient that has come to be known as the "pay-as-you-go" policy. This policy, put into effect by the Board of Estimate and Apportionment in 1914, was necessitated by a financial crisis precipitated by the war in Europe where seventy-seven million dollars of the city's short-term notes were held. To meet this emergency the city was compelled to borrow one hundred million dollars from New York

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banks, a condition imposed by the bankers being the adoption of the pay-as-you-go policy. Under this policy bonds for revenue producing improvements will continue to be issued as heretofore. But the cost of non-revenue producing improvements, according to a plan which will become wholly effective in 1918, will be paid for by the inclusion of the entire cost for any year in the annual budget. This plan was enacted into law at the 1916 session of the legislature, despite the argument that there was no reason for the intervention of the legislature and that the adoption of the policy was wholly a New York City matter that should have been controlled by the city. This new move means that for a few years New York City will have an additional financial burden to carry. But it also means that eventually there will result a very considerable decrease in the city debt and the establishment of the city's fiscal system on a sound basis.

Both the Massachusetts law and the New York City plan offer suggestions for the improvement of municipal finances and a lessening of the burden of bonded indebtedness. The first would limit the powers of a city, but in such a way as would eventually increase its financial independence. The pay-as-you-go policy could

be put into operation in many cities as it was originally in New York, without legislative enactment. It ought to be a matter for local authorities to take or reject as they see fit according to their local needs.

CHAPTER XII

MUNICIPAL REVENUES

No city will ever be able to work out its municipal destiny until it has control over its own exchequer. That is an essential factor in the movement for municipal home rule. This does not mean that a city can ignore its financial obligations either to the state or to individuals. It does not mean that it is to be allowed to run amuck financially. But it is important that within such necessary limitations and restrictions as the state law may impose, a city shall not only have control of its expenditures, but also of its revenues. This brings us to a consideration of the subject of taxation in municipalities.

As pointed out in the previous chapter, most American cities have handicapped themselves seriously in virtually giving away in perpetuity valuable rights and franchises which, if retained, would have constituted a considerable source of revenue and greatly lessened the tax burdens of today. Many cities do, however,

derive a considerable revenue from their public utilities and from special assessments on property which is held to be benefited by local improvements. But this revenue has only an indirect bearing on the problem of municipal taxation which we are here discussing. Taxation, broadly considered, is a state function. Cities are commonly held to have no inherent power to levy taxes and whatever powers they possess in this respect must be granted them by the state. Frequently, however, the power resides in the state legislature to delegate some of its taxing authority to cities, and this course has, in many instances, been followed. But without such a grant the city authorities exercise no power to impose taxes of any sort. A city in tax matters acts primarily as the agent of the state. It has been a common practice to confer on cities authority to administer state tax laws and to impose on them the obligation of providing the machinery for the assessment and collection of taxes. In some instances legislatures have conferred a limited power of general taxation on cities, but the more usual practice has been to empower a city to add a certain percentage to the state tax rate for local purposes. In other cases the taxes are separated, the cities being allowed to collect all or

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a part of the tax on land for their own use while the state reserves the revenue from other taxes for itself. In either case, however, the city, under the state law, usually levies and collects both its own and the state tax within its limits. As a rule the power of cities in respect to taxes is still further limited either by provisions of state law or by the constitution. These limitations, which usually take the shape of legislative authority to fix the tax rate or of restrictions on the purposes and objects of taxation, have been pretty strictly interpreted by the courts. As a result, there has been very little freedom left to cities to exercise discretion in such matters, and very little flexibility in the enforcement of the provisions of the state law.

What makes the situation so serious for the cities is that their municipal requirements are increasing at a much faster rate than their current income or even than their income is likely to increase in the future, unless the sources from which city revenues are obtained are extended. To summarize, the principal points to be borne in mind are these: Cities, forced by growing municipal needs and an insistent popular demand that they be satisfied, are compelled to increase their expenditures. Increased expenditures mean increased taxes.

But increased taxation, unless the subjects of taxation are also increased, means a popular protest that is very likely to be voiced politically. To meet this critical situation, we find cities with no inherent power to solve this problem, or to utilize the possible new sources of revenue that may lie close at hand. Is there any wonder, under these circumstances, that so many of the men engaged in practical municipal administration are ready to join in the popular demand for home rule, or at least local option, in taxation?

The problem then is twofold. First, a consideration of the relative advantages or disadvantages of home rule is taxation, and secondly, the closely related subject of a city's ability to tap new sources of municipal revenue.

Turning first to the subject of local option or home rule in taxation, we find ourselves at once in the midst of a heated controversy. It needs only a hasty examination of the arguments for and against this proposal to see that this is one of the many fields of discussion in which the proponents and opponents refuse to meet each other squarely. In the first place, it becomes evident that there is a vast difference in the extent of local authority which the advocates of so-called home rule or local option

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insist upon, and almost as great divergence in the opinion of those who oppose it, as to how much freedom, if any, and what sort of freedom it is safe to accord to the localities.

Advocates of home rule in taxation urge that the arguments that are put forward for municipal home rule in general apply with particular force to taxation. They urge that the possession of such powers by the localities will increase a city's sense of responsibility, and that it is a necessary factor in the proper development of local self-government. They hold that municipal authorities are better fitted to handle this matter than the state authorities, not only because of their greater familiarity with local needs but because of their manifestly greater interest in their particular local problems. Frequently, the argument is made that there should be diversity in the application of the tax laws, and that the measure of that diversity can only be determined by the locality. In like manner it is urged that the localities should determine both the tax rate and the objects of taxation. A proper classification of property and the separation of the objects of taxation for local and state purposes are also cardinal points in the programme of those who advocate a greater degree of local control in tax matters.

Opponents of local tax autonomy take issue with the home rulers first by declaring that as taxation is, and should be, essentially a state function, it should be regulated by state law, and that such a state law should not only cover the subject of state taxation, but of local taxation as well. The view of the home rulers as to the paramount interest of the persons living in a given locality is admitted, but it is denied that so long as non-residents own property in a city the actual residents are the only persons interested. Again the advocates of centralization argue that the state cannot afford to let its own revenues be left to the mercy or vagaries of local authorities. They hold that diversification in method, unless carefully restricted, would mean chaos and that local option in taxation really means only local option in exemptions. Complete home rule, it is contended, would, furthermore, be dangerous because it would be a temptation for cities to promise unwise and unfair exemptions, and that it would in particular open the door for competition in exemptions in different cities for the purpose of attracting new industries. Such a policy might appear to be temporarily advantageous, it is admitted, but it would eventually prove detrimental both to the state and to the city con-

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cerned. Finally, in an endeavor to warn off those advocates of a moderate degree of home rule, the intimation is thrown out that the home rule and local option movement so far as taxation is concerned, is merely a disguised form of the single tax propaganda.

The question now arises whether there is not a remedy which can be found neither in the extreme demands of the radical home rulers on the one hand, nor in the equally extreme arguments of those who would bring about complete centralization of tax administration and authority under absolute state control on the other. Such a remedy does not necessarily mean a compromise between these divergent views. A compromise on any terms is probably impossible. It does mean a sane and practical policy of taxation which will safeguard both the state and its municipalities, which shall be rigid enough to insure complete responsibility on the part of cities for the support of state and local government, or to prevent unfair discrimination and exemptions and rash and wasteful administration, and yet be flexible enough to permit of the extension of the principle of local self-government and to insure an equitable distribution of the proceeds of taxation between the cities and the state. Such a result cannot

manifestly be attained by the simple process of conferring on cities the power to levy such taxes as they choose, on such objects as they choose and at such rates as they choose. So here, just as in our consideration of the control of municipal public utilities and the administration of the civil service laws, we may agree that constitutional and statutory regulation of the subject of taxation does not necessarily mean the destruction of the principle of municipal home rule, but that it should, if properly applied, mean a very considerable extension of the home rule principle, and the ultimate increase in the power of cities to control their own incomes.

There have been, indeed, many indications of late years that this is the direction in which the solution of our tax problems is working its way out. This tendency is expressing itself in the efforts to remove constitutional impediments in the way of the delegation to localities by the legislature through general laws of greater powers in tax matters, and in the wiping out of the so-called "uniform rule" once found in most state constitutions providing that all sorts of property must be taxed alike regardless of its character, which has always been an immovable obstacle in the way of such a re-

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form. Such a tendency could not be easily defended if it meant an increase of the power of the legislature to interfere in the local affairs of cities. But there is small likelihood of any such result. What it does mean is the introduction of greater elasticity into existing tax systems which would enable legislatures to provide for such needed reforms as those permitting the classification of the subjects of taxation, and the separation of the sources of state and local revenue. Within recent years many states have amended their constitutions in this direction, in some instances providing specifically for classification and separation, as in Kentucky and Maryland, which approved constitutional amendments with this end in view only recently (1915). Other states, such as New York and Pennsylvania, have already in force laws which in practice result in leaving the revenue from the general property tax to cities, and reserve to the state the revenues from other sources.

There is no reason to believe that a perfectly adequate measure of home rule in taxation and a proper degree of state regulation may not be wholly reconciled, providing that there is nothing in the constitution to prevent such an adjustment. With adequate provisions for classi-

fication and separation in the state law and definite provisions for compelling responsibility and guarding against unfair discriminations and unwise exemptions, there is no reason why cities may not be accorded the practical control over their revenues which is deemed so essential. But there must somewhere be authority to keep the proper balance between state centralization and local autonomy. That such a balance should be preserved is a vital matter of state policy, the control of which can most properly be retained by the state. Such control need not endanger the home rule principle; it will not if cities are awake to their rights, and vigorous in their assertion. It is perfectly fair for the state to prescribe conditions under which local control shall be exercised, in order to preserve an equitable distribution of the tax burden between the cities themselves and between urban and rural districts. It is right that a restriction should be placed on the granting of exemptions, but within such limitations it is perfectly proper to allow cities to decide for themselves, not only the rate of taxation required for local purposes, but what property shall be taxed, and what property exempted. Separation of objects of taxation should assure the integrity of the state's resources. It will

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not in itself necessarily give a city a proper degree of freedom in choosing the objects of taxation. It is necessary, therefore, that within certain limitations which may be covered by a general state law, the city shall have the power to tap new sources of revenue for local purposes.

A study of the financial history of our American cities, both great and small, during the past few years, makes it increasingly evident that the new problems of city revenues must be met and solved in new ways. Just as the old slipshod methods of assessment and collection in which privilege, preference and politics exerted a malign influence, have proved wasteful and ineffective and must be replaced by modern business machinery, so, too, it is becoming increasingly evident that the old sources of revenue are wholly inadequate to meet the requirements of cities where costly public improvements have been inaugurated and where new agencies of public service are continually being created.

Tax experts have been paying attention rightly of late to the problem of how to perfect existing systems and how to make the most of ordinary sources of revenue. Very properly it has been considered important that existing evils and short-comings should be corrected be-

fore new experiments are tried. With this end in view there has been a great deal of study devoted to increased efficiency and economy in the collection of taxes. Even more important is it that the assessment of taxes should be perfected, that the administration of our tax laws should be made more efficient and that full value assessments based on a fair and equitable land value should be resorted to. Inequalities of assessment have been the source of much difficulty and more waste in the past. They have generally been accompanied by gross favoritism and unfairness. Such evils are only possible where there is partial value assessment. Actual full value assessment is the only way out of this difficulty. The problem for cities in this regard, however, is difficult of solution where there is a different basis or standard of assessments in cities and urban districts. Hand in hand with full value assessments, therefore, must go a proper separation of the objects of taxation, the importance of which has already been pointed out.

In regard to the readjustment or reformation of existing systems and methods, as well as in the enlargement of the sources of revenue, the city finds its problem made more difficult in most cases by certain important factors. These

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factors do not enter into the situation in every state of the Union with the same degree of importance, and in some cities one far outweighs the other in importance. General state laws dealing with taxation are more difficult to amend than almost any other class of laws. A tax system is apt to be so fixed that it becomes almost an institution. When it is shaken every taxpayer in the state feels that his pocketbook is affected. Add to this the fact that a movement for lower taxes is so frequently made a partisan political issue and it is easy to see how the difficulty of bringing about even the most necessary reforms are increased.

But perhaps more important than any of these considerations is the fact that in almost every state of the Union there exists an inherent jealousy between the rural and urban members of the legislature. The members from rural districts and from villages and small cities are used to lax tax methods and to low valuations for assessment purposes. Their needs are smaller than the needs of their city colleagues. The city men are used to higher tax valuations and to higher tax rates. They believe, with justice, that the lax methods and low valuations in the country districts shifts an increasing burden of state taxation on the city districts. They

see clearly that they are continually being made to pay money which they feel ought to be spent within their own cities on public improvements in distant parts of the state. All these things do not conduce to a harmonious action in the enactment of tax reform legislation.

Not only do old fashioned and antiquated statutes frequently stand in the way of the introduction of improved methods in city taxation problems, but the more rigid provisions of most state constitutions also offer a barrier which it is difficult to overcome. It may be comparatively simple to find a remedy which must be based on a change in the constitution, but it is difficult at best to get any large number of laymen to take an intelligent interest in an intricate problem of taxation. This all means that it is more difficult to amend a state constitution in respect to the state's power to tax and more especially in respect to a provision which would give cities greater opportunities to solve their tax problems than to make almost any other sort of amendments that can be imagined. For here, again, enters the jealousy between the rural and urban communities accentuated and increased by the lack of understanding of the problem on the part of a large pro-

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portion of the voting community which may be only remotely concerned.*

As a rule cities have had to depend for the largest part of their income on a percentage of a general property tax which comprised both real and personal property, not only tangible but intangible. The personal property tax has never been possible to administer with satisfaction, and there has been a growing inclination to do away with it as far as possible. On the other hand city land revenues have been advancing with great strides, and the holdings of intangible personal property have increased with the development in commerce and industry. Under a proper system of separation the city would still be left with the income from taxes on realty values and personalty. The admitted failure of the personal property tax as a revenue producer and the inherent difficulties in its administration have thrown more and more on real estate the burden of supplying revenue for municipal purposes. It is probably true that the importance of the real property

*In 1915 New York defeated by an adverse majority of approximately 575,000 in a total vote of less than 1,250,000 a separately submitted amendment to the constitution which would have made possible several valuable administrative reforms. It was defeated largely by misrepresentation as to its intent, which it was not possible in the too brief campaign to correct.

tax as the chief reliance of municipalities, is bound to increase. Accepting this situation, it behooves cities to give serious attention to making this tax as effective as possible. As at present administered it is often inequitable and ineffective. A large part of the difficulty lies in defects in the system of assessment. The importance of full value assessments cannot be too strongly emphasized, and the separate assessment of lands and improvements will tend to accuracy. As adjuncts to the real estate tax, special land taxes or increment taxes and special assessment on real estate benefitted by public improvements may be properly considered. But there are natural limitations on the extent to which real property may be taxed. Here the burden of taxation is soonest felt in an increase of rentals. Protests are sure to follow. It is this situation that leads to a consideration of new sources of municipal revenue.

Perhaps the most discussed of these suggestions for new or supplementary taxable sources is that for an income tax, which has already proved itself an important factor in the national tax system and is beginning to be considered as an available source of state revenue. There are difficulties in the way of the application of the income tax to municipal

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purposes—difficulties both of assessment and of administration. Whether it will be possible to find a satisfactory method of solving this problem, possibly through a system that would provide for state administration of the tax on a basis of the distribution of at least a part of the revenue among cities, or whether it had best be considered as a more natural source of revenue for the state, is a matter which will doubtless be the subject of considerable debate within the next few years. A tax that would seem to lend itself to fewer administrative difficulties from the municipal point of view is the so-called business tax, usually assessed on the rental value of premises used for business purposes. This tax has been used in Canada and in some southern states in the United States with a considerable degree of satisfaction. The habitation tax also offers possibilities of revenue peculiarly fitted to urban life. In addition to these there have been suggestions for several lesser taxes such as taxes on billboards, street signs and so on which could not, however, be expected to add greatly to the municipal revenues. It is not possible here to go into the points urged in favor of these various proposals in any detail. It must suffice to say that they are proposed as possible ways out of the financial difficulties in

which so many cities find themselves. Whether any one of them or all of them would prove satisfactory must be for the present largely a matter of conjecture. But in providing tax systems which shall be flexible enough to permit of necessary changes to meet new conditions of economic and industrial life, the possible value of cities being in a position to avail themselves of these practically untried sources of revenue should be kept in mind.

Before leaving the subject of municipal taxation the importance of one of its administrative features must be referred to. The assessment of property has always proved one of the most puzzling questions connected with the taxation problem. It was only after the severest sort of experience that cities began to appreciate the vital importance of assessing property in an orderly, businesslike way, and not treating it as something that could be done at odd times by amateurs or untrained officers. In most cities the assessors were chosen by popular vote of the taxpayers in relatively small districts. Frequently, the assessment district was a ward. If paid at all these assessors received very small salaries. They were not expected to devote all their time to their work and they were chosen usually on a party ticket

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with other elected officers. Hence, the mistake was made at the very beginning of treating an office that was primarily administrative and in which expert training was really required, as a purely political one. A considerable degree of progress has been made in reforming this important office but much still remains to be done. If a city's fiscal system is to be placed on a basis of solid efficiency the assessing machinery must be remodelled. But politics has not been the only evil that has fastened its hold on the business of assessment. Another difficulty lay in the tendency of assessors to enter into competition with each other with the idea of pleasing their constituents by lowering the ratio of assessment. In some instances this competition reached such proportions that the revenues of a city were seriously impaired. Then it was found necessary for the state to step in to correct the evil. It has been one of the most difficult tasks of tax reformers in recent years to take these offices out of politics and to teach assessors to look at their task not from the point of view of their constituents, the taxpayers, but from that of their employer, the city. There is an increasing demand that not only for the sake of a shorter ballot, but for the sake of efficiency in municipal administration and a proper con-

servation of the city's resources, these officers shall be trained experts appointed and not elected.

There are strong grounds for the belief that the demand for so-called home rule in taxation may be satisfied by proceeding along the lines that have been indicated in this chapter, always preserving a proper balance between the state and the cities, in such a manner that cities shall not lack the necessary revenue to meet these expenditures required by the demands upon them for agencies of service that increase the health, comfort and happiness of their inhabitants.

APPENDIX A

CONSTITUTIONAL HOME RULE IN NEW YORK

ADVOCATES of municipal home rule in New York State have been carrying on an active campaign for the adoption of an adequate constitutional amendment for several years. They have had extraordinary obstacles to contend with, some of the most serious being peculiar to New York. Success has not yet been achieved but the demand is now so widespread and a correct understanding of what it involves and what it will mean is so well established that it is only a question of a little more time, so home rule advocates believe, when the state will accord its cities this control over their own affairs. The existence of a single city with half the state's population crowded within its limits, and the political differences that have largely had their origin in this division of the population, have hitherto proved the most serious obstacles in the way of success.

New York State has suffered from legislative interference and the evils of special local legislation to a remarkable degree. The constitutional convention of 1894 recognized this condition and attempted to meet the difficulty by the classification of cities and the

adoption of the suspensive veto, by which the mayors, or the mayor and council, might prevent legislation not approved by them. This remedy checked the most serious abuses, but did not reach the root of the evil. Some temporary improvement, so far as cities of the second class were concerned, was brought about also by the enactment of a so-called uniform second class cities law. But because of lack of home rule powers, charters of second class cities at once became subject to all sorts of amendments at the hands of the legislature that tended to destroy the uniformity. The application of a uniform charter to third class cities—those under fifty thousand in population—was suggested, but the differing needs of cities in this class and the wide divergence in their population, as well as the failure of the second class cities law to do what it was originally intended to do, caused those who studied the situation to abandon the idea of uniform charters.

At this point (1912) The Municipal Government Association was organized and stepped into the field with a comprehensive and well considered plan for home rule which included a municipal empowering act applying to all cities, an optional city charter law under which cities might by referendum choose between several different forms of simplified charters, an optional non-partisan municipal elections act under which cities might, if they chose, conduct their local elections on a non-partisan basis, and finally a constitutional amendment granting home rule to cities. The strength of the movement given direction by the association, forced all political parties to be more explicit in their usually perfunctory demands for

home rule. The association cooperated in the organization of the State Conference of Mayors and Other City Officials—an organization which has developed into one of the most effective associations of public officers in the country—and obtained from it endorsement of its entire municipal home rule program. The municipal empowering act and the optional city charter law were enacted, and a constitutional amendment which, while not so far reaching or as complete as the Municipal Government Association had been advocating would, nevertheless, have meant a long step in the direction of full and adequate home rule, was incorporated in the constitution drafted by the constitutional convention of 1915 and was defeated together with the rest of that progressive but ill-fated instrument.

The proposal submitted by the Municipal Government Association to the Convention of 1915 is printed below. It is presented here in the form in which it was submitted to the convention as an amendment to the present municipal article, the proposed changes being indicated in italics and the parts of the existing article to be eliminated, enclosed in brackets. The outstanding points in this proposal, it will be seen, were a broad general grant of power to cities to manage their own government, property and affairs, specific authority to draft and adopt charters and charter amendments as well as local laws and ordinances, provisions that would tend to change the presumption of law so that it would favor the cities rather than the state, the abolition of the right of the legislature to pass local laws, and a restriction of its authority to the enactment of general city legisla-

tion. The proposal as submitted to the convention was as follows:

PROPOSED CONSTITUTIONAL AMEND-
MENT

To amend article twelve of the constitution, relating to cities and villages, so as to regulate legislation concerning them and guarantee to them the right of municipal self-government.

The Delegates of the People of the State of New York, in Convention assembled, do propose as follows:

Article twelve of the constitution is hereby amended to read as follows:

ARTICLE XII

§1. *Each city and each village shall have full power to regulate matters relating to its own property, affairs and government, and to the property, affairs and government, of one or more counties lying wholly within the city, and to exercise full powers of local self-government, subject to this constitution and the laws of the state. The powers hereby conferred shall be liberally construed, and no enumeration of powers contained in this constitution or in any law shall be deemed to limit or restrict the general grant of powers hereby conferred; but the legislature may, by general laws, which shall in terms and in effect apply to all villages, limit or restrict the powers of villages.*

§2. *Each city and each village shall have power to adopt and amend local laws not inconsistent with the constitution and general laws of the state, providing for the exercise of the powers granted by this constitution or by the laws of the state and relating to the local affairs and property of the city or village, the powers, duties, qualifications, number, mode of selection and removal, terms of office and compensation of all officers and employees whose compensation is paid directly or indirectly out of the city treasury, other than justices of courts of record, the manner of conducting elections of elective city or village officers, the transaction of its business, the incurring of its obligations, the presentation, ascertainment and discharge of claims against it, the acquisition, care, management and use of its streets and property, including public utilities, the wages or salaries, the hours of work or labor, and the protection, welfare and safety of persons employed by any contractor or sub-contractor performing work, labor or services for it, and the government and regulation of the conduct of its inhabitants and the protection of their property, safety, health, comfort, and general welfare. Such local laws and amendments thereto shall be known and designated as "local municipal laws" to distinguish them from local laws passed by the senate and assembly. Such local municipal laws shall be drafted by commissioners appointed by designated officers or official body of the city or village or by convention of delegates elected at a special election by ballots containing no party designations or by convention composed partly of commissioners and partly of delegates. A petition by electors of a city or village, in such number or pro-*

portion as shall be prescribed by the legislature, may require the calling of a special election to determine whether a local municipal law shall be drafted, and whether the drafting shall be by commissioners, by a convention of delegates, or by a convention composed partly of commissioners and partly of delegates, and the legislature shall provide by general law for such special elections. The legislature shall also provide means whereby in the absence of any such petition, the drafting of local municipal laws may be required by action of officers or official body of a city or village, and shall prescribe by which of the aforesaid methods such local municipal laws shall after the taking of such action be drafted, or the legislature may direct that the method of drafting be determined by the electors at a special election, or by officers or official body of the city or village. Every local municipal law shall be submitted to the electors of the city or village for adoption after publication for a period and in a manner to be prescribed by general law, but no such period shall be less than three months. Every local municipal law so adopted shall supersede and repeal, so far as the city or village adopting it is concerned, all inconsistent provisions of any law other than general laws applying alike to all cities or to all villages. A local municipal law may delegate to officers or official body of the city or village power to regulate by ordinance, resolution or by-law any matter which may be the subject of a local municipal law; the drafting and adopting of such ordinances, resolutions, or by-laws shall be regulated by law and the provisions of this article regarding the drafting and adoption of local municipal laws shall

not be applicable thereto. A city shall be deemed, for the purposes of this section, to include one or more counties lying wholly within such city, and the powers hereby granted shall, except as in this constitution otherwise provided, extend over such county or counties. The legislature shall, at its next session after this section shall become part of the constitution, provide by general law for carrying into effect the provisions of this section.

§3. The legislature shall not pass any law relating to the property, affairs or government of cities or villages or one or more counties lying wholly within a city, which shall be special or local either in its terms or in its effect, but all laws hereafter passed relating to the property, affairs or government of any city or village or any county lying wholly within a city shall be general laws and shall in terms and in effect apply alike to all cities or to all villages.

§ [1] 4. It shall be the duty of the legislature by such general laws to provide for the organization of cities and incorporated villages, and to restrict their power of taxation, assessment, borrowing money, contracting debts, and loaning their credit, so as to prevent abuses in assessments and in contracting debt by such municipal corporations and to provide by such a general law for the conditions under which and the method by which villages or the inhabitants of unincorporated territory may incorporate as cities, and the manner in which territory may be annexed or separated from cities; [and the legislature may regulate and fix the wages or salaries, the hours of work or labor, and make provision for the protection, welfare and safety of persons employed by the state or

by any county, town, village or other civil division of the state, or by any contractor or subcontractor performing work, labor or services for the state, or for any county, city, town, village or other civil division thereof].

§5. The provisions of this article shall not be deemed to restrict the power of the legislature to regulate matters of state concern as distinguished from matters relating to the property, affairs or government of cities or villages.

[§ 2. All cities are classified according to the latest state enumeration, as from time to time made, as follows: The first class includes all cities having a population of one hundred and seventy-five thousand or more; the second class, all cities having a population of fifty thousand and less than one hundred and seventy-five thousand; the third class, all other cities. Laws relating to the property, affairs or government of cities, and the several departments thereof, are divided into general and special city laws; general city laws are those which relate to all the cities of one or more classes; special city laws are those which relate to a single city, or to less than all the cities of a class. Special city laws shall not be passed except in conformity with the provisions of this section. After any bill for a special city law, relating to a city, has been passed by both branches of the legislature, the house in which it originated shall immediately transmit a certified copy thereof to the mayor of such city, and within fifteen days thereafter the mayor shall return such bill to the house from which it was sent, or if the session of the legislature at which such bill was passed has terminated, to the governor, with the may-

or's certificate thereon, stating whether the city has or has not accepted the same. In every city of the first class, the mayor, and in every other city, the mayor and the legislative body thereof concurrently, shall act for such city as to such bill; but the legislature may provide for the concurrence of the legislative body in cities of the first class. The legislature shall provide for a public notice and opportunity for a public hearing concerning any such bill in every city to which it relates, before action thereon. Such a bill, if it relates to more than one city, shall be transmitted to the mayor of each city to which it relates, and shall not be deemed accepted unless accepted as herein provided, by every such city. Whenever any such bill is accepted as herein provided, it shall be subject, as are other bills, to the action of the governor. Whenever, during the session at which it was passed, any such bill is returned without the acceptance of the city or cities to which it relates, or within such fifteen days is not returned, it may nevertheless again be passed by both branches of the legislature, and it shall then be subject as are other bills, to the action of the governor. In every special city law which has been accepted by the city or cities to which it relates, the title shall be followed by the words "accepted by the city," or "cities," as the case may be; in every such law which is passed without such acceptance, by the words "passed without the acceptance of the city," or "cities," as the case may be.]

Section [3] 6. All elections of city officers, including supervisors and judicial officers of inferior local courts, elected in any city or part of a city, and of county officers elected [in the counties of New York

and Kings], and in all counties *wholly within a city or whose boundaries are the same as those of a city*, except to fill vacancies, shall be held [on the Tuesday succeeding the first Monday in November] in an odd-numbered year, and the term of every such officer shall expire at the end of an odd-numbered year. [The terms of office of all such officers elected before the first day of January, eighteen hundred and ninety-five, whose successors have not then been elected, which under existing laws would expire with an even-numbered year, or in an odd-numbered year and before the end thereof, are extended to and including the last day of December next following the time when such terms would otherwise expire; the terms of office of all such officers, which under existing laws would expire in an even-numbered year, and before the end thereof, are abridged so as to expire at the end of the preceding year.] This section shall not apply [to any city of the third class, or] to elections of any judicial officer, except judges and justices of inferior local courts.

APPENDIX B

MUNICIPAL HOME RULE CONSTITUTIONAL PROVISIONS

**(Recommended by Committee on Municipal Program
of the National Municipal League.)**

Section 1. Incorporation and Organization. Provision shall be made by a general law for the incorporation of cities and villages; and by a general law for the organization and government of cities and villages which do not adopt laws or charters in accordance with the provisions of sections 2 and 3 of this article.

Section 2. Optional Laws. Laws may be enacted affecting the organization and government of cities and villages, which shall become effective in any city or village only when submitted to the electors thereof and approved by a majority of those voting thereon.

Section 3. City Charters. Any city may frame and adopt a charter for its own government in the following manner: The legislative authority of the city may by a two-thirds vote of its members, and, upon the petition of ten per cent of the qualified electors, shall forthwith provide by ordinance for the submission to the electors of the question: "Shall a com-

mission be chosen to frame a charter?" The ordinance shall require that the question be submitted to the electors at the next regular municipal election, if one shall occur not less than sixty nor more than one hundred and twenty days after its passage, otherwise at a special election to be called and held within the time aforesaid; the ballot containing such question shall also contain the names of candidates for members of the proposed commission, but without party designation.

Such candidates shall be nominated by petition which shall be signed by not less than two per cent. of the qualified electors, and be filed with the election authorities at least thirty days before such election; provided, that in no case shall the signatures of more than one thousand (1000) qualified electors be required for the nomination of any candidate. If a majority of the electors voting on the question of choosing a commission shall vote in the affirmative, then the fifteen candidates receiving the highest number of votes (or if the legislative authority of the state provides by general law for the election of such commissioners by means of a preferential ballot or proportional representation or both, then the fifteen chosen in the manner required by such general law) shall constitute the charter commission and shall proceed to frame a charter.

Any charter so framed shall be submitted to the qualified electors of the city at an election to be held at a time to be determined by the charter commission, which shall be at least thirty days subsequent to its completion and distribution among the electors and not more than one year from the date of the election

of the charter commission. Alternative provisions may also be submitted to be voted upon separately. The commission shall make provision for the distribution of copies of the proposed charter and of any alternative provisions to the qualified electors of the city not less than thirty days before the election at which it is voted upon. Such proposed charter and such alternative provisions as are approved by a majority of the electors voting thereon shall become the organic law of such city at such time as may be fixed therein, and shall supersede any existing charter and all laws affecting the organization and government of such city which are in conflict therewith. Within thirty days after its approval the election authorities shall certify a copy of such charter to the secretary of state, who shall file the same as a public record in his office, and the same shall be published as an appendix to the session laws enacted by the legislature.

Section 4. Amendments. Amendments to any such charter may be framed and submitted by a charter commission in the same manner as provided in section 3 for framing and adopting a charter. Amendments may also be proposed by two-thirds of the legislative authority of the city, or by petition of ten per cent. of the electors; and any such amendment after due public hearing before such legislative authority, shall be submitted at a regular or special election as is provided for the submission of the question of choosing a charter commission. Copies of all proposed amendments shall be sent to the qualified electors. Any such amendment approved by a majority of the electors voting thereon shall become a part of the charter of the city at the time fixed in the amendment

and shall be certified to and filed and published by the secretary of state as in the case of a charter.

Section 5. Powers. Each city shall have and is hereby granted the authority to exercise all powers relating to municipal affairs; and no enumeration of powers in this constitution or any law shall be deemed to limit or restrict the general grant of authority hereby conferred; but this grant of authority shall not be deemed to limit or restrict the power of the legislature, in matters relating to state affairs, to enact general laws applicable alike to all cities of the state.

The following shall be deemed to be a part of the powers conferred upon cities by this section:

(a) To levy, assess and collect taxes and to borrow money, within the limits prescribed by general law; and to levy and collect special assessments for benefits conferred;

(b) To furnish all local public services; to purchase, hire, construct, own, maintain, and operate or lease local public utilities; to acquire, by condemnation or otherwise, within or without the corporate limits, property necessary for any such purposes, subject to restrictions imposed by general law for the protection of other communities; and to grant local public utility franchises and regulate the exercise thereof;

(c) To make local public improvements and to acquire, by condemnation or otherwise, property within its corporate limits necessary for such improvements; and also to acquire an excess over that needed for any such improvement, and to sell or lease such excess property with restrictions, in order to protect and preserve the improvement;

(d) To issue and sell bonds on the security of any

such excess property, or of any public utility owned by the city, or of the revenues thereof, or of both, including in the case of a public utility, if deemed desirable by the city, a franchise stating the terms upon which, in case of foreclosure, the purchaser may operate such utility;

(e) To organize and administer public schools and libraries, subject to the general laws establishing a standard of education for the state;

(f) To adopt and enforce within its limits local police, sanitary and other similar regulations not in conflict with general laws.

Section 6. Reports. General laws may be passed requiring reports from cities as to their transactions and financial condition, and providing for the examination of the vouchers by state officials, books and accounts of all municipal authorities, or of public undertakings conducted by such authorities.

Section 7. Elections. All elections and submissions of questions provided for in this article or in any charter or law adopted in accordance herewith shall be conducted by the election authorities provided by general law.

Section 8. Consolidation of City and County. Any city of 100,000 population or over,* upon vote of the electors taken in the manner provided by general law, may be organized as a distinct county; and any such city and county may in its municipal charter provide for the consolidation of the county, city and all other local authorities in one system of municipal government, in which provision shall be made for the exer-

* This number may be varied to suit local conditions in the several states.

cise of all powers and duties vested in the several local authorities. Any such consolidated city and county government shall also have the same powers to levy taxes and to borrow money as were vested in the several local authorities before consolidation.

APPENDIX C

OPTIONAL CITY CHARTERS

With the widespread recognition and application of the optional idea in connection with the adoption of city charters, an important step in the direction of practical municipal home rule has been taken. Affording cities an option as to the sort of charter they want does not take the place of a grant of adequate constitutional powers, but it may guide them to a proper application of such powers where they exist. Where no constitutional provisions exist the opportunity afforded a city to acquire the type of charter it wishes is definite and assured. Where such constitutional power does exist the opportunity for a proper adjustment of the charters to the needs of individual cities is, however, greatly enhanced and simplified by an optional law. As originally set forth in the optional city charter act introduced at the instance of the Municipal Government Association in the New York State Legislature in 1913 and enacted in 1914, the plan has been followed in other states.* Ohio, Massachusetts,

*In New York the cities of Niagara Falls, Newburgh and Watertown have adopted the optional plan which provides for government by a commission elected at large with a city manager. Auburn, Geneva, Dunkirk, Elmira, Lockport, Cohoes, Watervliet and Mount Vernon have voted on one or another of the options without obtaining the necessary majority for adoption. The attorney general of the state has

and Virginia have adopted optional city charter laws based on the principle of and in some respects closely following the New York State statute. An outline and summary of the New York law is here presented.

This act does not impose any sort of charter on any city. It merely gives to every city of the second and third class an opportunity to adopt a modern type of charter if a majority of its voting citizens so desire. The act offers seven options to cities. The seventh, known as plan G, however, applies only to third class cities, and allows them to adopt the uniform White Charter for second class cities with salaries on a lower schedule.

Certain provisions which are applicable to all the plans tend to make the charters simpler in operation and to decrease the number of elected officers. There are some cities in the state which today choose their councilmen at large, but which are far from having short ballot charters because they elect at the same time a large number of other officers, such as assessors, city engineer, city attorney, city treasurer and so on. Even under Plan F as provided in this act, although the council is elected by wards, such officers as those mentioned above are made appointive, and the principle of the short ballot is thus established. There are three classes of officials, however, who are not affected by the adoption of any one of these charters by a city. These are the judicial officers and the county supervisors, who remain elective as heretofore,

raised a question as to the constitutionality of the powers of local government conferred on the city councils to reshape the old charters under this act and a suit to test this point in the law, instituted in connection with the Watertown charter is now (February, 1917) before the courts.

and the boards of education which remain either elective or appointive according as to whether they were elected or appointed before the change.

In other words, it is intended that, except as to the framework or structure of the city government, the existing charters shall remain as little changed as possible. There is no intention of providing complete charters for the cities that adopt one of these forms of government. It is specifically provided that all existing laws and ordinances and all provisions of the existing charter shall remain unimpaired and in full force until repealed, altered or superseded by act of the newly created legislative body. The limitations on the legislative authority and the conditions under which it may act are carefully laid down in Section 37 of the act, wherein it is provided that the council shall have power to regulate by ordinance the exercise of powers and the performance of duties of officers and employees of the city, or to terminate or transfer such powers or duties. Under all plans but the last the city council has authority to create the necessary city departments, provide for the necessary officers of administration and fix their salaries. Under all these plans also only the compensation of the mayor and council is fixed by law, according to the population of the city.

Among the provisions applicable to all of the six first forms are those which provide for weekly meetings of the council, provide that the terms of mayors and councilmen shall be four years, and for the filling of vacancies and removal from office, granting the council powers of investigation, and providing for the continuance of all pension and special funds and for

the application of the civil service laws to city officials. Under plans A, B and C the council may act as a board of assessors, or provide for the appointment of assessors. Under plans D, E, and F the mayor appoints the assessors with the advice and consent of the council.

In order that some idea may be had of what the structure of a city government would be like under the several plans, the provisions of each form (in addition to the general provisions applicable to all cities) are here set forth.

PLAN A

Government by a limited council, or commission, with division of administrative duties. Under this plan a city chooses by election at large a council of five members, one of whom is elected as mayor. Cities of less than twenty-five thousand inhabitants are allowed, however, to decide for themselves whether they will have three or five councilmen. The terms of all are for four years, but it is so arranged that only part of them shall be elected every two years. The mayor merely acts as head of the city for ceremonial occasions, presides at the meetings of the council, and exercises a general oversight over all the departments, but has power only to make recommendations. He votes as a councilman, but has no power of veto. All legislative, executive and administrative power is vested in the council which divides the city into departments and designates one of its members to serve as head of one or more of these departments. The council decides what appointive officers are necessary and fixes

their duties, their qualifications and their salaries. All subordinate officers are appointed by the council, or under its authority, and may be removed by the council. The salaries of the council are fixed by the law according to the size of the city, running from four hundred dollars in cities of less than eight thousand inhabitants to four thousand five hundred dollars in cities of a hundred thousand or more. The salary of the mayor is in every case one-fourth greater than that of the other councilmen.

PLAN B

Government by a limited council, or commission, with collective supervision of administration. This plan differs from Plan A chiefly in the amount of actual work required of the members of the council. The council possesses the same executive, legislative and administrative powers that it does under Plan A, but instead of dividing up the city administration among themselves and each becoming the head of one or more departments, the council acts rather as a board of directors and chooses other officials to direct the administrative work of the departments. The salaries, qualifications and duties of these department heads are, however, like those of their subordinates, determined by the council. As under Plan A, the mayor presides at council meetings, has a general oversight over the city administration, votes as a member of the council, but does not possess the power of veto. As they are not expected to devote any considerable portion of their time to the city administration, the salaries of the mayor and councilmen are fixed on

a lower scale, running from three hundred dollars in cities of less than ten thousand inhabitants to twelve hundred dollars in cities of one hundred thousand or more. Under this plan, as under Plan A, cities of less than twenty-five thousand population may determine for themselves whether the council shall consist of three or five members.

PLAN C

Government by a limited council, or commission, which shall choose a city manager. It provides for a mayor and four councilmen in third class cities, and for a mayor and six councilmen in second class cities, in both cases elected at large for four-year terms, part being chosen every two years. The salaries of mayor and councilmen are the same as under Plan B. The council possesses full legislative power, but delegates the executive and administrative power to a city manager whom it selects. This city manager becomes the administrative head of the city, prepares a tentative budget of city expenditures, and regularly reports and makes recommendations to the council. The council determines what officers and employees are necessary for the proper administration of the city, but the power of appointment and removal rests with the city manager. The mayor votes as a member of the council, but has no veto, nor does he concern himself with the details of city administration.

PLAN D

Government by means of separate executive and legislative departments. Both mayor and council are

elected at large under this plan. The council consists of five members in cities having twenty-five thousand inhabitants or over. In cities of less than twenty-five thousand population, it is optional with the city, as in Plans A and B, to determine whether there shall be three or five councilmen. The mayor is the executive head of the city and appoints all officers as required by law or ordinance, or created by the council. The assessors are appointed by him with the approval of the council, which fixes the duties of all city officers and employees, and their salaries. The council elects its own president. The mayor has the power of approval or veto, on ordinances or resolutions of the council, which, however, may re-pass an ordinance over his veto. The salaries of the councilmen are fixed at one-half the amount received by councilmen under Plan A. The mayor, however, of whom a great deal is required under this plan, receives a salary three times that of a councilman in his city. As under plans A, B and C the short ballot principle is preserved by making the mayor and council the only elective officers aside from judicial officers and supervisors.

PLAN E

Government by means of separate executive and legislative departments, the latter to consist of a council of nine, elected at large. This plan differs from Plan D only in the size of the council, which is fixed for all cities. Here again the mayor and councilmen are the only municipal officers elected, save judges and supervisors. The powers of both mayor and council are identical with those under Plan D.

PLAN F

Government consisting of a mayor elected at large, and a legislative council chosen by wards. Except that this plan provides that there are to be as many councilmen as there are wards in the city, it differs in no respect from Plans D and E. Each ward is to elect but one councilman. The powers of the mayor and council and salaries, and terms of office are the same as in the two preceding plans in which there is a separation of the executive and legislative functions.

PLAN G

Adoption by third class cities of the second class cities' law. This plan merely extends optionally the second class cities' law, known as the White Charter, to such cities of the third class as adopt it on referendum. On the adoption of this plan by a third class city all the provisions of the second class cities' law become applicable with the exception of the fixed salary schedules. These shall be two-thirds of the amount provided in the White Charter for cities having a population of less than seventy-five thousand.

A petition requesting the submission to a popular vote of one of the foregoing plans may be submitted to the existing city council at any time. Such a petition must be signed by qualified voters to the number of at least ten per cent. of the votes cast in the city at the last preceding general city election, but in no city are more than two thousand signatures required. All provisions of the election law as to polling places, registration, form of ballot and canvass of the returns

apply both at the election at which any plan is voted on, and at the election at which new officers are elected in the event of the adoption of a plan.

Only one plan may be voted on at a time, and that plan, if rejected, cannot be again voted on until a year shall have elapsed. Other plans may, however, be submitted at any time. If any one of the plans proposed is adopted it continues in force for a period of four years, during which period no other plan may be considered. No plan adopted goes into effect until the officers provided for under it shall have been elected and taken office. Such officers are to be elected at the general city election next succeeding the adoption of the plan, and take office on the first day of the second calendar month next succeeding their election.

APPENDIX D

INITIATIVE, REFERENDUM AND RECALL

The method of applying the initiative, referendum and recall in municipalities is shown in the following provisions originally incorporated in the Optional City Charter Act in New York. These provisions were eliminated before the act became law on the refusal of the legislative leaders to consider the measure so long as they were retained in it.

Section 61. The initiative. Any proposed ordinance, or the question of the repeal of an existing ordinance, may be submitted to the council by petition signed by the electors of the city equal in number to the percentage hereinafter required.

The petition presenting the proposed ordinance, or proposed repeal, shall contain a statement in not more than two hundred words giving the petitioners' reasons for the adoption, or the repeal, of such ordinance; and if it be signed by electors equal in number to at least fifteen per centum of the votes cast for all candidates for mayor at the last election at which a mayor was chosen, and contains a request that the said ordinance be submitted to a vote of the people the council shall either (a) pass such proposed ordinance, without alteration, or repeal such existing ordinance, within ten days after determining the suffi-

ciency of the petition, or (b) within said ten days call a special election (unless a general election is to be held at least thirty and within ninety days thereafter) and at such special or succeeding general election such proposed ordinance, or the repeal of such existing ordinance, shall be submitted without alteration to the vote of the electors of the city. The council may in its discretion propose an ordinance for substitution and may submit the same to the electors at the same election. If the petition is signed by less than fifteen per centum but at least five per centum of the electors as above defined,* then the council shall within such period of ten days pass said ordinance without change, or repeal such existing ordinance, or shall submit such question of the adoption or repeal of the same and the adoption of any substitute proposed therefor at the next general election occurring not less than thirty days after the presentation of the petition. The ballot used when voting upon such ordinance shall be printed as provided in section three hundred and thirty-two of the election law. If a majority of the qualified electors voting on a proposed ordinance shall vote in favor thereof it shall thereupon become a valid and binding ordinance of the city, and the same shall not be repealed or amended, except by a vote of the electors, within two years thereafter. If the majority of the qualified electors voting on the repeal of an existing ordinance shall vote in favor of its repeal, it shall thereupon become of no force and effect.

* The percentages required throughout this measure were somewhat lower in the bill as first drafted. Even the revised percentages are lower than those generally believed to be both safe and workable.

When there are two or more ordinances proposed to accomplish the same purpose, the council shall cause a statement to this effect to be printed upon the ballot, and the ballot shall be so arranged that the voter may (first) vote for or against the adoption of any and all ordinances for the same purpose and (second) may express a preference for any one of such ordinances. If a majority of the votes on the first question is affirmative, then the ordinance receiving the highest number of votes shall become law, and the others shall fail of passage. In case two or more ordinances of the same tenor are tied for the highest vote, they shall be resubmitted at the next general municipal election.

The council may submit the repeal or modification of any ordinance adopted hereunder, to be voted upon at any general election succeeding its adoption.

Section 62. The referendum. No ordinance passed by the council, unless (a) otherwise required by the general laws of the state, or (b) an ordinance immediately necessary for the preservation of the public morals, health or safety and which contains a statement of such immediate necessity and is passed by at least a three-fourths vote of the council, shall go into effect until thirty days after its final passage. If at any time during said thirty days a petition, signed by electors equal in number to at least ten per centum of the entire vote cast for all candidates for mayor at the last election at which a mayor was chosen, protesting against the enactment of such ordinance and requesting its repeal, or requesting its adoption in a proposed amended form, be presented to the council, such ordinance shall thereupon be suspended from going into effect and it shall be the duty of the council to recon-

sider such ordinance. If upon reconsideration thereof said ordinance is not entirely repealed, if so requested, or adopted in the amended form as proposed, the council shall submit the question of the repeal, or the adoption of the ordinance in its proposed amended form, in the manner provided by (b) of section sixty-one of this act; if the repeal of such ordinance was requested, such ordinance shall not go into effect unless a majority of the electors voting thereon at such election shall vote against its repeal; if the amendment of said ordinance was proposed, the ordinance shall become effective in its proposed amended form if such majority vote is cast in favor thereof, but if not such ordinance shall become effective in the form as enacted by the council.

No resolution of the council, appropriating money other than for the regular payrolls, or incurring or providing for the incurring of any expense, or disposing of any property or rights of the city, shall become effective until thirty days after its adoption; and its operation shall be suspended, and it shall be reconsidered and submitted to the electors, in the same manner as in this section provided with respect to an ordinance.

Section 63. Distribution of ordinances among electors. Whenever an ordinance is required under sections sixty-one or sixty-two of this act to be submitted, for adoption, modification or repeal, to the electors of the city at any election, the council shall cause the ordinance to be printed and it shall be the duty of the commissioner of elections to enclose a printed copy thereof in an envelope with a sample ballot, and mail the same to each qualified voter at least five days prior

to the election. The failure on the part of any voter to receive or to be sent such copy and ballot shall not affect the validity of the election. The person filing such petition shall have the right to present to the commissioner of elections at any time twenty-five days prior to said election, printed copies of an argument favoring such ordinance, and the members of the council shall have the right to present, or permit to be presented, to the commissioner of elections, with the same limit of time, an argument opposing such ordinance. Neither of such arguments shall exceed two thousand words in length and shall be printed in such a form, suitable for mailing, as the commissioner of elections shall prescribe. The commissioner of elections shall enclose one copy of such arguments with the sample ballot and copy of the ordinance, mailed to each voter, provided that they are furnished with printed copies of such argument equal in number to five per centum in excess of the total number of qualified electors. Nothing in this section shall constitute authority for the council to expend any money belonging to the city for the formulation or printing of any argument. Any number of proposed ordinances under the initiative or the referendum may be voted upon at the same election.

Section 64. The recall of mayor or councilman. The mayor or any one or more of the councilmen may be removed from office at any time after one year from the beginning of their several terms of office by the electors qualified to vote for a successor for such incumbent. The procedure to effect such removal shall be as herein provided: 1. A petition signed by qualified electors of the city equal in number to at

least fifteen per centum of the entire vote cast therein for governor at the last gubernatorial election, and demanding the election of a successor of the officer sought to be removed, shall be filed with the city clerk, which petition shall contain a general statement of the grounds upon which the election of a successor is sought. Such petition may be filed at any time after one year has elapsed since the beginning of the term of the official sought to be removed. Each signer shall add to his signature his place of residence, giving street and number if any. Such petition may be in the form of separate papers, but each separate paper to which signatures are appended shall contain at the top thereof the original petition or duplicate statement thereof, and when bound together and offered for filing such separate papers shall be deemed to constitute one petition with respect to the election of the successor of the officer or officers named therein. One of the signers of such petition shall make oath before a proper official that the statements made therein are true as he believes, and upon such separate paper to which signatures are appended one of the signers of the petition shall make oath that each signature to such paper is the genuine signature of the person whose name it purports to be.

2. If it appears that the petition is signed by the requisite percentage of electors, the same shall be accepted as *prima facie* regular and sufficient, but it shall be subject to summary review in the same manner as provided in section seventeen of this act.

3. If the petition shall be sufficient, and if the officer or officers whose removal is sought shall not resign within five days after the sufficiency of the pe-

tition has been determined by the council, the council shall thereupon order, and fix a day for holding, an election for the selection of a successor to each officer named in said petition, which election shall be held not less than thirty nor more than forty days from the presentation of the petition, or from the making of any court order thereon. The council shall cause publication of notice and all arrangements to be made for holding such election, and the same shall be conducted and the result thereof returned and declared in all respects as in other special elections so far as possible.

4. A nomination of a candidate to succeed each officer sought to be removed shall be made without the intervention of a primary election, by filing with the commissioner of elections, at least ten days prior to such special election, a petition proposing a person for such office, signed by the electors equal in number to five per centum of the entire vote cast in the city for all candidates for governor at the last gubernatorial election.

5. The ballots at such election shall conform to the following requirements: With respect to each officer whose removal is sought the question shall be submitted: Shall (name of officer) be removed from the office of (name office) by recall? Under the said question may be placed, at the request of the elector whose signature appears first on the petition, a statement, not over two hundred words in length of the grounds upon which the removal is sought. Following such statement, the incumbent officer may cause to be placed a statement not over two hundred words in length of reasons why he should not be removed

from office. Beneath the aforesaid statement shall be placed the names of candidates to fill the vacancy. The name of the officer whose removal is sought shall not appear on the ballot as a candidate to succeed himself.

6. In any such election if a majority of the votes cast on the question of removal are affirmative, the candidate receiving the plurality of the votes cast shall be declared elected. The officer whose removal is sought shall thereupon be deemed removed from office upon the announcement of the official canvass of the election. The successor of any officer so removed shall hold office during the unexpired term of his predecessor. In case the person receiving the plurality of votes shall fail to qualify within ten days after receiving notification of his election, the office shall be deemed vacant. The question of the removal of any officer shall not be submitted to the electors a second time during the same term of office, until after the expiration of one year from the determination of the first application for his removal. The method of removal herein provided is cumulative and additional to such other methods as may be provided by law.

APPENDIX E

PREFERENTIAL VOTING

The following table which shows the result of the vote at the first election under the Grand Junction (Colorado) charter, illustrates the working of the preferential ballot as commonly followed in American cities.

Vote for Mayor (1909)

| Candidate | Combined Total | | | | |
|-----------|----------------|---------------|---------------|-------------------|-------------|
| | First Choice | Second Choice | Other Choices | 1st & 2nd Choices | all Choices |
| Aupperle | 465 | 143 | 145 | 608 | 753 |
| Bannister | 603 | 93 | 43 | 696 | 739 |
| Lough | 99 | 231 | 228 | 330 | 658 |
| Lutes | 41 | 114 | 88 | 155 | 243 |
| Slocumb | 243 | 357 | 326 | 586 | 926 |
| Todd * | 362 | 293 | 396 | 655 | 1051 |
| | <hr/> | <hr/> | <hr/> | <hr/> | <hr/> |
| | 1813 | 1231 | 1326 | | |

* Elected.

The ballot contained the following "instructions to voters:"

To vote for any person, make a cross (X) mark in ink in the square in the appropriate column according to your choice, at the right of the name voted for. Vote your first choice in the first column; vote your second choice in the second column; vote any other choice in the third column; vote only one first and only one second choice. Do not vote more than one choice for one person, as only one choice will count for any candidate by this ballot. Omit voting for one name for each office if more than one candidate therefor. All distinguishing marks make the ballot void. If you wrongly mark, tear, or deface this ballot, return it, and obtain another.

METHOD OF COUNT

The preferential ballots are counted by first adding up the first choices cast for each candidate. In the choice of members of a council if any candidates receive a number of first choices equal to a majority of all the ballots cast, they are declared elected in the order of the votes received. In the case of candidates who do not receive a majority of first choice votes the second choice votes cast for each candidate are then counted and added to the total of first choices. Any candidates who have then obtained a total of first and second choice votes equal to a majority of all ballots cast are then declared elected in the order of the number of votes received. If a number of candidates equal to the number of offices to be filled have not yet received the required majority, the other choices indicated for each candidate are added to his first and second choices, and candidates are then declared elected

in the order of the number of votes received. In case of a tie, the order of precedence is determined by the larger number of first choices. In the election of a single officer the same method is followed, the candidate being declared elected at that point in the count at which he receives a majority of all the ballots cast.

APPENDIX F

PROPORTIONAL REPRESENTATION METHOD OF COUNT

The method of counting the ballots where the Hare system of proportional representation is in use (as in Ashtabula) is indicated by the following rules for counting the ballots printed as an appendix to the National Municipal League's "Model Charter."

RULES FOR COUNTING THE BALLOTS. Ballots cast for the election of members of the council shall be counted and the results determined by the election authorities according to the following rules:

(a) On all ballots a cross shall be considered equivalent to the figure 1. So far as may be consistent with the general election laws, every ballot from which the first choice of the voter can be clearly ascertained shall be considered valid.

(b) The ballots shall first be sorted and counted at the several voting precincts according to the first choices of the voters. At each voting precinct the first-choice ballots cast for each candidate shall be put up in a separate package, which shall be properly marked on the outside to show the number of ballots therein and the name of the candidate for

whom cast. The ballots declared invalid by the precinct officials shall also be put up in a separate package, properly marked on the outside. All the packages of the precinct, together with a record of the precinct count, shall be forwarded to the general election authorities of the city as directed by those authorities, and the counting of the ballots shall proceed under their direction.

(c) First-choice votes for each candidate shall be added and tabulated as the first count.

(d) The whole number of valid ballots shall then be divided by a number greater by one than the number of seats to be filled. The next whole number larger than the quotient thus obtained shall be the quota or constituency.

(e) All candidates the number of whose votes on the first count is equal to or greater than the quota shall then be declared elected.

(f) All votes obtained by any candidate in excess of the quota shall be termed the surplus of that candidate.

(g) The surplus shall be transferred, the largest surplus first, then the next largest, and so on. Each ballot of the surplus that is capable of transfer shall be transferred to and added to the votes of the continuing candidate, marked on it as the next preference.

(h) "Ballots capable of transfer" means ballots from which the next lower choice of the voter for some continuing candidate can be ascertained. "Con-

tinuing candidates" means candidates as yet neither elected nor defeated.

(i) The particular ballots to be taken for transfer as the surplus of such candidate shall be obtained by taking as nearly an equal number of ballots as possible from the first-choice ballots, capable of transfer, that have been cast for the candidate in each of the different precincts of the city. All such surplus ballots shall be taken without selection as they may happen to come in the different packages.

(j) After the transfer of all surpluses, the votes standing to the credit of each candidate shall be counted and tabulated as the second count.

(k) After the tabulation of the second count (or after that of the first count if no candidate received a surplus on the first) the candidate lowest on the poll as it then stands shall be declared defeated and all his ballots capable of transfer shall be transferred to the continuing candidates, each ballot being transferred to the credit of that continuing candidate preferred by the voter. After the transfer of these ballots a fresh count and tabulation shall be made. In this manner candidates shall be successively declared defeated, and their ballots capable of transfer transferred to continuing candidates, and a fresh count and tabulation made. After any tabulation the candidate to be declared defeated shall be the one then lowest on the poll.

(l) Whenever in the transfer of a surplus or of the ballots of a defeated candidate the votes of any

candidate shall equal the quota, he shall immediately be declared elected and no further transfer to him shall be made.

(m) When candidates to the number of the seats to be filled have received a quota and therefore have been declared elected, all other candidates shall be declared defeated and the count shall be at an end, and when the number of continuing candidates shall be reduced to the number of seats to be filled, those candidates shall be declared elected whether they have received the full quota or not and the count shall be at an end.

(n) If at any count two or more candidates at the bottom of the poll have the same number of votes, that candidate shall first be declared defeated who was lowest at the next preceding count at which their votes were different. Should it happen that the votes of these candidates are equal to each other on all counts, lots shall be drawn to decide which candidate shall next be declared defeated.

(o) In the transfer of the ballots of any candidate who has received ballots by transfer those ballots shall first be transferred upon which the defeated candidate was first choice and the remaining ballots shall be transferred in the order of the transfers by which they were received by the defeated candidate.

(p) On each tabulation a count shall be kept of those ballots which have not been used in the election of some candidate and which are not capable of transfer, under the designation "Non-transferable ballots."

(q) So far as may be consistent with good order and with convenience in the counting and transferring of the ballots, the public, representatives of the press, and especially the candidates themselves shall be afforded every facility for being present and witnessing these operations.

PROPORTIONAL REPRESENTATION

RESULT SHEET. ASHTABULA (OHIO) ELECTION OF COUNCIL. Nov. 2, 1915

[illegible]

Number of Councilmen to be elected, 7
Number of valid ballots, 2,972

$$\text{Quota or Constituency} \left(\frac{\text{No. of valid ballots}}{\text{No. of seats} + 1} + \right) = 372$$

APPENDIX G

PROPORTIONAL REPRESENTATION

A minus sign before a number means the taking of that number of votes from the candidate whose name appears at the head of the column for transfer to other candidates according to the indicated will of the voter.

A plus sign before a number means the adding of that number of votes to the candidate indicated according to the will of the voters as expressed on such ballots.

Each result column shows the standing of all candidates after the transfer of votes recorded in the preceding column.

At the Ashtabula election, it will be seen, only one candidate, McClure, obtained the quota required to elect on the first choice ballots. Only two other candidates, Hogan and McCune, obtained the required quota at any period of the count. The other four candidates elected were chosen on the basis of having obtained enough votes to include them in the list of seven highest.

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